TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909

No. ~~195.~~ 24

FREDERICK WEYERHAEUSER AND JOHN A. HUMBIRD, APPELLANTS,

vs.

HERBERT H. HOYT.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED JULY 8, 1908.

(21,254.)

(21,254.)

SUPREME COURT OF THE UNITED STATES

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No. 458

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vs.

HERBERT H. HOYT.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

INDEX.

	Page.
Caption	*a*
Transcript from United States circuit court	1
Stipulation for the withdrawal of certain exhibits	1
Defendant's Exhibit No. 1—Statement as to selection list No. 15 of Northern Pacific R. R. Co., filed October 17, 1883	2
Certificate of register and receiver, October 17, 1883	2
Defendant's Exhibit 2—Statement as to rearrangement of list No. 15.	3
Order granting leave to withdraw certain exhibits	4
Transcript from district court of St. Louis county, Minnesota	5
Bill of complaint	5
Receiver's receipt No. 14812 to Richard B. Jones, December 10, 1895	7
Decision of Assistant Commissioner of General Land Office, December 2, 1901	8
Letter, Commissioner of General Land Office to register and receiver, Duluth, July 17, 1897	12
Exhibit A—Papers *in re* application of Richard B. Jones for timber and stone lands	25
Affidavit of Richard B. Jones, December 17, 1897	25
Notice of intention to make proof	25
Certificate as to posting of notice, March 22, 1898	26
Testimony of Nicholas Bangs	26
Testimony of claimant, Richard B. Jones	27

Page.

Certificate of register as to testing the accuracy of affiant's information, etc. 29
Testimony of Alexander Fraser. 29
Affidavit of Richard B. Jones, March 22, 1898. 31
Proof of publication of notice in Duluth News Tribune. 31
Notice of intention to make proof. 32
Exhibit B—Decision of Secretary of Interior in case of Jones *vs.* Northern Pacific R. R. Co., August 30, 1905. 33
C—Plat showing the withdrawal on general route for the Lake Superior and Mississippi railroad, etc. 42
D—Act of incorporation of Superior and St. Croix R. R. Co., etc. 43
Amendment of act approved January 20, 1871. 53
Amendment of act approved March 16, 1871. 54
Amendment of act approved April 15, 1895. 55
Minutes of meeting of stockholders of Superior and St. Croix R. R. Co., October 8, 1895. 65
Minutes of meeting of stockholders of Superior and St. Croix R. R. Co., July 1, 1896. 66
Certificate of secretary of state of State of Wisconsin. 67
Sheriff's return of service of summons. 68
Summons. 68
Petition for removal to Federal court. 68
Bond for removal. 70
Order of removal. 71
Clerk's certificate to transcript from State court. 72
Stipulation to extend time for pleading to bill of complaint. 72
Order extending time to plead to bill of complaint. 72
Answer. 73
Replication to answer of Frederick Weyerhaeuser. 80
Replication to answer of John A. Humbird. 80
Recital of placing of cause on calendar for trial. 82
Order consolidating causes for trial. 82
Record entry of hearing, March 4, 1907. 82
Order: Cause submitted. 83
Record of proceedings before Thomas H. Pressnell, examiner. 83
Testimony for complainant. 84
Certificate of Commissioner of General Land Office attached to diagram, Exhibit H. 84
Certificate of acting Commissioner of General Land Office attached to Exhibit I. 85
Testimony of J. J. Durrage. 85
Certificate of Commissioner of General Land Office attached to list No. 2, Exhibit N. 89
Stipulation as to Northern Pacific Railroad Company selection list No. 15, filed October 17, 1883, etc. 91
Certificate of Charles B. Lamborn, land commissioner. 91
Certificate of Charles B. Lamborn, land commissioner, to Northern Pacific Railroad Co.'s certified list No. 15 B. 92
First annual report of Northern Pacific railway to the railroad commission of Wisconsin for ten months ending June 30, 1897. 93
Stipulation that land in controversy exceeds in value $2,000. 94

Page.

Exhibit V—Annual report of Northern Pacific Ry. Co. to railroad commission of Wisconsin for year ending June 30, 1905 94
Testimony for defendants 96
Testimony of Sherman H. Mason 96
Testimony of Sidney Livesey 99
Stipulation as to Exhibit 15, deed dated January 19, 1900 102
Stipulation that land in controversy was patented to Northern Pacific Railway Co. October 18, 1905 103
Stipulation as to Complainant's Exhibit D, attached to bill 103
Stipulation for use of copies of exhibits 104
Complainant's exhibits 104
Complainant's Exhibit E—Joint resolution introduced April 8, 1896, to facilitate the reorganization of the Northern Pacific R. R. Co., etc 104
Report of April 21, 1896 107
Amendment, May 16, 1896 112
Amendment, May 25, 1896 114
Amendment, June 5, 1896 115
Amendment by Mr. Nelson, June 5, 1896 116
Amendment by Mr. Smith, June 6, 1896 117
Complainant's Exhibit F—Report of Committee on the Judiciary to the Senate, April 21, 1896 118
G—Copy from the Journal of the Senate, April 8, 1896, and April 21, 1896 122
I—Diagram showing the limits of the grant to the Northern Pacific Railroad Company 123
K—Resolution of board of directors of Northern Pacific Railway Company, July 13, 1898 124
Letter, D. S. Lamont, vice-president, to Secretary of Interior, July 21, 1898 124
Complainant's Exhibit L—Letter, H. Willard, president, to Secretary of Interior, July 3, 1882 125
Complainant's Exhibit M—Exemplified copy of letter of Commissioner of General Land Office to register and receiver, Taylor's Falls, May 26, 1864, etc 127
Letter of Secretary of Interior to Commissioner of General Land Office, October 12, 1866 127
Letter of Commissioner of General Land Office to register and receiver at Duluth, November 2, 1866 128
Complainant's Exhibit N—List No. 2 of land approved for the Lake Superior & Mississippi Railroad Co., March 25, 1868 131
O—Exemplified copy of approval of selection of Northern Pacific Railroad Co. for indemnity on S. W. ¼ of S. E. ¼ of sec. 11, T. 46 N., R. 16 west, October 17, 1905 135
P—Receiver's receipt No. 14,812 to Richard B. Jones, December 10, 1898 139

Page.

Complainant's Exhibit Q—Deed, Richard B. Jones and wife to Minnie Stewart, December 19, 1898..... 139
R—Deed, Minnie Stewart and husband to Herbert H. Hoyt, March 22, 1902..... 141
T—Copy from Journal of the Senate, April 8, 1896, April 21, 1896, and copy from Congressional Record, January 23, 1897..... 143
Defendants' exhibits..... 144
Defendants' Exhibit 7—Original order of sale in case of Farmers' Loan & Trust Co. *vs.* Northern Pacific R. R. Co. *et al*..... 144
8—Amended order of sale in case of Farmers' Loan & Trust Co. *vs.* Northern Pacific R. R. Co. *et al*..... 149
9—Report of sale in case of Farmers' Loan & Trust Co. *vs.* Northern Pacific R. R. Co. *et al*..... 156
Schedule A-2—List of lands offered for sale..... 163
Defendants' Exhibit 11—Original decree of United States circuit court, district of Minnesota, in case of Farmers' Loan & Trust Co. *vs.* Northern Pacific R. R. Co. *et al*. 177
12—Order of United States circuit court, district of Minnesota, confirming sales of land made by Alfred L. Cary, special master, in case of Farmers' Loan & Trust Co. *vs.* Northern Pac. R. R. Co. *et al*..... 183
13—Special master's and receivers' deed to Northern Pacific Railway Company, September 22, 1899..... 188
14—Deed, Northern Pacific Railroad Company to Northern Pacific Railway Co., December 21, 1899..... 197
15—Deed, Northern Pacific Railway Co. to Frederick Weyerhaeuser and John A. Humbird, January 19, 1900. 201
17—Act of Congress approved April 28, 1904, validating certain conveyances made by Northern Pacific R. R. Co. and Northern Pacific Railway Co. 203
18—Act of Congress approved May 17, 1906, for the relief of certain entrymen and settlers within the limits of the Northern Pacific railway land grant..... 204
Decree, March 12, 1907..... 204
Petition for and order allowing appeal..... 205
Assignment of errors..... 206
Bond on appeal..... 208

	Page.
Citation and admission of service	210
Clerk's certificate to transcript	210
Appearance of counsel for appellant	212
Appearance of counsel for appellees	212
Order of submission	213
Opinion of United States circuit court of appeals	213
Decree of United States circuit court of appeals	222
Motion of appellees to modify direction in opinion and decree	223
Order modifying opinion and decree	224
Petition and order allowing appeal to Supreme Court of the United States	225
Assignment of errors on appeal to Supreme Court of the United States	225
Bond on appeal to the Supreme Court of the United States	227
Citation and admission of service on appeal to the Supreme Court of the United States	228
Clerk's certificate to transcript	228

Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the December Term, A. D. 1907, of said Court, begun and held at the United States Court House in the City of St. Louis, Missouri, on the first Monday in December, to-wit: the second day of December, A. D. 1907, before the Honorable Walter H. Sanborn and the Honorable Elmer B. Adams, Circuit Judges, and the Honorable John F. Philips, District Judge.

Attest:

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it Remembered that heretofore, to-wit: on the nineteenth day of June, A. D. 1907, a transcript of record, pursuant to an appeal allowed by the Circuit Court of the United States for the District of Minnesota, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein Herbert H. Hoyt was Appellant, and Frederick Weyerhaeuser and John A. Humbird were Appellees, which said transcript of record is in the words and figures following, to-wit:

1 United States Circuit Court, District of Minnesota, Fifth Division.

Herbert H. Hoyt, Complainant,
No. 497. vs. In Equity.
Frederick Weyerhaeuser and John A. Humbird, Defendants.

Appearances:

H. H. Hoyt, Duluth, Minnesota, Solicitor for Complainant.

C. W. Bunn, and J. B. Kerr, St. Paul, Minnesota, and H. Oldenberg, Carlton, Minnesota, Solicitors for Defendants.

Pleas in the United States Circuit Court, District of Minnesota, Fifth Division, in the above entitled cause.

Be It Remembered, That on the 6th day of May, A. D. 1907, there was filed with the Clerk of said Court at his office in Duluth, said District and Division, a stipulation withdrawing certain exhibits from the files and records of said cause and stipulating certain evidence in lieu thereof, and that on the same day Orders of the Court permitting the withdrawal of said exhibits was duly entered in the Term Minutes of said Court, in said cause; which said stipulation and orders are, in words and figures as follows, to-wit:

2 Herbert H. Hoyt, Complainant,
No. 497. vs. In Equity.
John A. Humbird and Frederick Weyerhaeuser.

It is stipulated by and between the respective parties to the above entitled cause, as follows:

1.

That the complainant may withdraw from the record and exhibits the map Exhibit "H" which is identical with the map attached as Exhibit "C" to the bill of complaint therein; leaving in evidence the certificate attached to the map as appears on page 140 of the record.

[2.]

That the complainant may withdraw from the record the map marked Exhibit "I" leaving in evidence the certificate attached to the map as appears on page 141 of the record, and substitute therefor a lithographic copy.

3.

That the complainant may withdraw from the record and exhibits, Exhibits "S" and "V" except to the extent that those Exhibits are copied into the record on pages 151, 152, 153 and 154.

4.

That defendant's Exhibit "I" may be withdrawn, and that the following shall be taken as a correct statement of the facts shown by that Exhibit in so far as it affects this cause:

3 That Exhibit "I" is a copy of Northern Pacific Railroad Company's selection list No. 15, filed at Duluth, Minnesota, October 17, 1883. That in said list there was selected 43,548.12 acres of land, including the S. W. 1/4 of S. E. 1/4, of Section 7, township 54 north, range 14 west, the land here in suit. This list specifies losses in bulk, i. e. it stated the losses by specific descriptions, and the selections by specific descriptions, each footing up the same number of acres; but it did not assign each selection to a particular loss.

This selection list was accepted by the Register and Receiver and transmitted to the general land office. That attached to this list were two certificates, one of which is copied into the record at page 149, and the other of which is as follows:

United States Land Office,

Duluth, Minn., Oct. 17, 1883.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Northern Pacific Railroad Company, under the grant to the said Company by Act of Congress approved July 2, 1864, and joint resolution approved May 31, 1870, and selected by said Northern Pacific Railroad Company by Chas B. Lamborn, the duly authorized agent, and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States and within the limit of 40 miles on each side and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, state or any other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assess-

ment of the fees payable to us, allowed by the Act of Congress, approved July 1, 1864, and contemplated by the circular of instructions dated January 24, 1867, addressed by the Commissioner of the General Land Office to Registers and Receivers of the United States Land Offices; and that the said Company have paid to the undersigned, the Receiver, the full sum of Five Hundred & Forty-four (544) Dollars in full payment and discharge and said fees.

(Sgd.) J. R. CAREY, Register.
W. W. SPALDING, Receiver.

5.

That defendant's Exhibit "2" may be withdrawn, and that the following shall be taken as a correct statement of the facts shown by that exhibit, in so far as it affects this cause.

That Exhibit "2" is a rearrangement of List No. 15, referred to in paragraph 4 hereof. This rearrangement was made by the Railroad Company pursuant to an order by the Secretary of the Interior, and the rearranged list was filed in the Duluth Land Office on April 11, 1893. The reason for the rearrangement was to specify a particular tract lost as a basis for each selection. In this rearranged list there was set opposite the tract in controversy the N. W. 1/4 of N. E. 1/4 of section 11, township 46 North, range 16 west in Minnesota. That attached to this list was a certificate which is copied into the record at page 150.

6.

That defendant's Exhibits "3" and "4" may be withdrawn, and that the following shall be taken as a correct statement of the facts shown by those exhibits:

That Exhibit "3" shows that the line of the Northern Pacific Railroad from the Red River of the North to Thomson, Minnesota was definitely located November 21, 1871.

That Exhibit "4" shows that the line of the Northern Pacific railroad from Thomson, Minnesota, to a point near Ashland, Wisconsin, was definitely located July 6, 1882.

7.

That defendant's Exhibits "5" and "6" may be withdrawn, and that the following shall be taken to be a correct statement of the facts shown in those exhibits in so far as they affect this cause.

That the Lake Superior & Mississippi railroad, as definitely located and constructed, extended from St. Paul in a northerly

direction to Duluth, Minnesota; and that the Northern Pacific railroad, as definitely located and constructed, extended from Ashland, Wisconsin, westerly across Wisconsin and Minnesota.

8.

That defendant's Exhibit "16" may be withdrawn. It being the same as appears in the printed regulation of the Secretary in the 28th volume of the land office decisions commencing on page 103 of that volume, the copy of said circular there appearing may be considered in evidence in this case.

H. H. HOYT,
Solicitor for Complainant.

C. W. BUNN,
Solicitor for Defendants.

In accordance with the foregoing stipulation, it is, by the Court

Ordered: That complainant herein be and hereby is granted permission to withdraw the following papers from the records and files of said cause, to-wit: Complainant's Exhibits "H", "S" and "V"; and the Clerk of this Court is hereby directed to deliver said Exhibits to the solicitor for the complainant herein upon the delivery to him of a receipt therefor.

And it is by the Court further

Ordered: That complainant may withdraw from the record and files in said cause the map marked Exhibit "I" upon the substitution therefor of a lithographic copy thereof, and upon the delivery to the Clerk of the Court of a receipt for said Exhibit "I".

And it is by the Court further

Ordered: That the defendants herein be and they hereby are granted permission to withdraw the following papers from the records and files in said cause, to-wit: defendants' Exhibits Nos. 1, 2, 3, 4, 5, 6 and 16; and the Clerk of this Court is hereby directed to deliver said Exhibits to the solicitors for the defendants herein upon the delivery to him of a receipt therefor.

That thereafter, to-wit: on the 8th day of November, A. D. 1905, there was filed with said clerk a transcript from the District Court of the Eleventh Judicial District, State of Minnesota, County of St. Louis, in said cause; in the words and figures following, to-wit:

7 District Court, Eleventh Judicial District.

State of Minnesota,
County of St. Louis—ss.

Herbert H. Hoyt, Plaintiff,
vs.
Frederick Weyerhauser and John A. Humbird, Defendants.

Complaint.

The plaintiff for his cause against the defendants alleges:

I.

That at all of the times in this complaint mentioned, the land hereinafter described was, and now is, unfit for cultivation, and valuable chiefly for the timber standing and growing thereon, and has no valuable deposit of gold, silver, cinnabar, copper or coal, and that the land is now in a state of nature, uninhabited, and contains no mining or other improvements.

8 II.

That on or about December 17, 1898, one Richard B. Jones who was then and there a citizen of the United States, over the age of twenty-one years, and in all respects duly qualified to enter land, desiring to avail himself of the provisions of the act of Congress entitled "An Act for the Sale of Timber Land in the States of California, Oregon and Nevada, and in Washington Territory," approved June 3, 1878, as amended by act of August 4, 1892, extending the benefits of the former act to all the public land states, did file with the Register and Receiver of the United States land office of the Duluth Land District, at Duluth in the State of Minnesota, a written statement in duplicate wherein he designated by legal subdivision the particular tract of land he desired to purchase, that is to say, the South West $\frac{1}{4}$ of the South East $\frac{1}{4}$ of Section Seven (7) in Township Fifty four (54) North of Range Fourteen (14) West of the 4th Principal Meridian in the district of lands subject to sale at Duluth, Minnesota; which written statement set forth that said land was then unfit for cultivation, and was valuable chiefly for its timber; that it was uninhabited and had no mining or other improvements, or any valuable deposit of gold, silver, cinnabar, copper or coal. Said written statement further set forth that said Jones had made no other application under said act of Congress, and that he did not apply to purchase said land on speculation, but in good faith, to appropriate it to his own exclusive use and benefit, and that he had not directly or indirectly, made any

9 agreement or contract in any way or manner, with any person or persons whomsoever, by which the title

which he might acquire from the Government of the United States should inure to the benefit of any person except himself. Said statement in duplicate was then and there signed by said Jones, and was verified by his oath before the register of said United States land office of the Duluth Land District (in which district the land was situated and one of said duplicate statements, signed and verified by said applicant as aforesaid, was by the receiver of said land office transmitted forthwith to the general land office at Washington, D. C.

Upon the filing of said statement, the said register of said land office did forthwith post in his office, for the period of sixty days, a notice of said application, embracing a description of said land by legal subdivision, and did furnish to said applicant a copy of said notice, which was thereupon published at the expense of said applicant for a like period of sixty days, in a newspaper printed and published in Duluth, Minnesota, which newspaper was then and there the newspaper published nearest to the location of said land. That on the 27th day of March, 1898, and after said copy of said statement had been posted for the full period of sixty days, and had likewise been published as aforesaid for the full period of sixty days, no claim adverse to said claim of said applicant had been filed in said land office; and the said applicant did then and there furnish to the said register of said land office satisfactory evidence (which evidence was satisfactory to the said register) that said notice of said application prepared by the register had been duly published for the period of sixty days in the newspaper published nearest to the location of said land, and further establishing that the said land was valuable chiefly for timber, and was unfit for cultivation and was not included within any military, Indian or other reservations of the United States, and had not been offered at public sale according to law prior to June 3, 1878, and that it was subject to entry under said act of Congress, and was uninhabited and without improvement, and that it contained no valuable deposits of gold, silver, cinnabar, copper or coal, and that all the averments in said written statement contained were true. A copy of all the papers containing evidence above mentioned and above referred to is hereunto attached marked Exhibit "A", and made a part of this complaint.

And thereupon the said Richard B. Jones did pay to the receiver of said land office of the Duluth Land District the purchase money of said land, to-wit, the sum of two and one-half dollars per acre, in lawful money of the United States, together with all fees of the register and receiver as required by law; and thereupon the said applicant was by said register and re-

ceiver permitted to enter, and he did enter, the said tract of land hereinbefore described, and the said receiver did execute, and deliver to him a certificate of purchase of said
11 land substantially in the words and figures following, to-wit:

No. 14812.

Receiver's Office at Duluth, Minn., December 10, 1895.

Received from Richard B. Jones of St. Louis County, Minnesota, the sum of One Hundred Dollars, being in full for the $SW\frac{1}{4}$ of $SE\frac{1}{4}$ of Section No. 7, in Township No. 54 N. of Range No. 14 W. 4th P. M. containing forty acres, at $2.50 per acre.

J. M. SMITH, Receiver.

$100.00.

$0.65 cents testimony fee received. Number of written words 433, rate per hundred words 15 cents. Paid March 22, 1898.

On margin of receipt the following, $10.00 for T. & S. No. 3377, December 17, 1897. Across the face of the receipt in red ink appears the following: "This receipt is issued under the order of the Secretary of the Interior, dated February 28, 1898, subject to any claim the Northern Pacific Railroad Company may have to the lands herein described."

That said J. M. Smith was at the date of the certificate above mentioned the duly appointed, commissioned and
12 qualified receiver of said land office of the Duluth Land District. That thereafter, and on or about the 10th day of December, 1898, said register and receiver did transmit to the general land office at Washington all of the testimony and papers in the matter of said application by said Richard B. Jones, including the duplicate of said certificate of purchase, and said papers and testimony were received and placed on file in the general land office, in the month of December, 1898. That thereafter and on the 19th day of December, 1898, Richard B. Jones and wife sold and conveyed the said land to one Minnie Stewart by deed, duly signed and acknowledged by said Jones and wife, which deed was duly recorded in the office of the Register of Deeds of St. Louis County, Minnesota, the county in which said land is situated, on the 3rd day of October, 1902, in Book 195 of Deeds on page 453, to which the plaintiff prays leave to refer. That thereafter and on the 22nd day of March, 1902, the said Minnie Stewart and her husband did convey said land by deed to Herbert H. Hoyt, the above named plaintiff, which deed was duly signed and ac-

knowledged by said Minnie Stewart and her husband, and was recorded in the office of the Register of Deeds of St. Louis county, Minnesota, the county in which the land is situated, on the 3rd day of October, 1902, in Book 195 of Deeds on page 454, to which the plaintiff begs leave to refer.

That on the 2nd day of December, 1901, the Commissioner of the General Land Office did make and render his de-
13 cision holding for cancellation the entry of the land heretofore referred to by Richard B. Jones, declaring said entry to be null and void, upon the pretended ground stated in such decision, of which the following is a copy:

Washington, D. C., Dec. 2, 1901.

"Register & Receiver,
"Duluth, Minn.

"Sirs,—

"The SW¼ of SE¼, Sec. 7, T. 54 N., R. 14 W. was selected by the Northern Pacific Railroad (now Railway Co.), October 17, 1883, for second indemnity, per list 15, re-arranged list 15 B., in lieu of land in Sec. 11, T. 46 R. 16 W. in the primary limits disposed of between date of grant and definite location of the road, which selection has not since been abandoned or the basis otherwise used.

"The selection was cancelled, however, by letter of March 22, 1897, because the land is east of Duluth, the then eastern terminal of the grant under departmental ruling; but said cancellation was rescinded and the selection restored by letter of May 26, 1900, under the decision of the U. S. Supreme Court, 177 U. S., 435, that the grant extends to Ashland, Wisconsin.

"December 17, 1897, Richard B. Jones applied to purchase said tract under the Timber & Stone law, and after due publication and proof, made entry thereof December 10, 1898. Cash certificate No. 14812.

14 "Under the decision of the Court, the selection of the company is a valid selection, and the claim of Jones not having been perfected prior to January 1, 1898, his claim is not within the act of July 1, 1898 (Departmental decision of May 22, 1900, Salter v. Company.

"Said entry is therefore hereby held for cancellation for conflict with the prior valid selection of the company, subject to appeal. Notify him hereof; the company will be informed by this office.

Very respectfully,

W. S. RICHARDS,
Assistant Commissioner."

That said order was so made and entered by the Commissioner of the General Land Office without any previous notice to Richard B. Jones, or to those claiming title to the land under him, and without any trial or hearing, and without any legal or competent evidence.

That at the time of the tender of the application by Richard B. Jones, the land was a part of the public domain, subject to appropriation; that said entry by Jones has never been waived, canceled or relinquished to the United States in any manner by the plaintiff or by any of his predecessors in interest, and that said order of the Commissioner of the general land
15 office purporting to hold for cancellation said entry, was without jurisdiction, and was, and is, void.

And the plaintiff further shows that under the rules and practice of the Department, an appeal from the decision of the Commissioner of the General Land Office was duly taken to the Secretary of the Interior, and after due consideration of the subject matter, the decision of the Commissioner was, on August 30, 1905, affirmed. A copy of such decision is hereto annexed and made a part of the plaintiff's complaint and marked Exhibit "B".

That, notwithstanding the said entry and payment by said Richard B. Jones, a patent for said land, in the name of the United States, signed by the president and countersigned by the recorder of the General Land Office, was thereafter issued to the Northern Pacific Railway Company, from the General Land Office at Washington.

That the Northern Pacific Railway Company, long before the issuing of said patent, had full knowledge and notice of said entry and payment therefor by said Jones, and of the plaintiff's rights and claims thereunder; and that such pretended cancellation of said Jones' entry was ineffectual and void.

III.

And the plaintiff further says, that the land in controversy in this suit, and heretofore described, was not within the original grant to the Northern Pacific Railroad Company conferred upon that road by the act of Congress dated
16 July 2, 1864, but was embraced within the extended indemnity limits of said road by the Joint-resolution of Congress dated May 31, 1870. That the pretended selection of said land for indemnity for the loss of land within the place limits of the grant to the Northern Pacific Railroad, was illegal.

The basis of this selection being the alleged loss of the N½ of NE¼, Sec. 11, T. 46 N. R. 16 W., within the overlap-

ping limits of the grant to the State of Minnesota, to aid in the construction of a railroad from St. Paul to Lake Superior, of which the Lake Superior & Mississippi R. R. Co. became the beneficiary. The date of that grant being May 5, 1864, was prior to the date of the grant to the Northern Pacific Railroad Company, and the land for which indemnity in this case is claimed was approved to the Lake Superior & Mississippi R. R. Co. April 25, 1868. The base land was outside of the withdrawal of May 26, 1864, for the benefit of the Lake Superior & Mississippi Railroad Company, and beyond the lateral limits of the grant to said Lake Superior & Mississippi Railroad Company, under the act of May 5, 1864, but was within the limits of the extension of the grant to said company under the act of July 13, 1866. If the base land had been within the grant to the L. S. & M. R. R. Co. under the act of May 5, 1864, then the right of the Northern Pacific Railroad Company (if any existed), would be to seek indemnity for its loss within the first indemnity of its road. If the loss occurred after the date of the grant to the Northern Pacific Railroad Company, and such loss was occasioned
17 by reason of the selection of said land by the L. S. & M. R. R. Co., then no indemnity would be allowed for such loss, for the reason that, if the Northern Pacific Railroad Company was entitled to the land, and the L. S. & M. R. R. Co. was allowed to select the same, the rights of the Northern Pacific Railroad Company to this land should be sought against the Lake Superior & Mississippi Railroad Company, and not against the United States. There is no provision of law permitting indemnity for the loss in such cases. Upon the facts stated, the plaintiff claims that the selection of this land as indemnity for the lands alleged to have been lost, was illegal and void.

IV.

And the plaintiff further says, that under the 3rd section of the act of July 2, 1864, granting land in aid of the construction of a railroad from Lake Superior to Puget Sound, it was provided:

"That if said route shall be found upon the line of any other railroad route to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act."

Between Duluth and Thompson's Junction, the route of the Northern Pacific Railroad is upon the line of the Lake Sup-

perior & Mississippi Railroad, and between these
18 points the amount of land granted in aid of the construction of the Lake Superior & Mississippi R. R. should be deducted from the amount of land granted to the Northern Pacific Railroad Company.

And the plaintiff further shows, that in order to make plain the line of the two grants, a copy of the official diagram of each road is herewith attached marked Exhibit "C", and made a part of this complaint.

V.

And the plaintiff further shows, that in order to make a valid selection of lands in lieu of lands lost within the primary limits of the Northern Pacific Railroad Company's grant, certain things are required to be done: The list of selections must be made in accordance with the law and the rules of the Department. If the list is not made in the manner prescribed, then the preliminary proceedings are of no more effect than would be the filing of any other unauthorized paper in the local land office. The plaintiff claims that, because of the willful disregard of the law and rules of the Department by the Northern Pacific Railroad Company, list No. 15 and List No. 15 B. are not effective to segregate the land selected, and are absolutely void for any purpose. Under the Joint-resolution of May 31, 1870, the Northern Pacific Railroad Company could receive no land within the second indemnity limits of its road until it was to appear that the quantity of lands in the first indemnity limits were
19 insufficient to make up the deficiency. The selecting agent applying to make indemnity selections, is required to state in his affidavit attached to the list presented, that the specific lands for which indemnity is claimed are truly set forth and described in said list, and that said losses have not heretofore been indemnified in any manner; it must also appear that lands selected within the second indemnity limits of said railroad were based upon losses in the place limits of the grant, subsequent to the date of the grant and prior to the definite location of the road, and where deficiencies exist, for which indemnity is allowed by law, the lieu selections must be made from vacant, unappropriated lands, within proper sections and limits nearest the granted sections in which the loss occurred. None of these things which are required to be done, were done by the company in selecting this land in controversy; and the burden of showing these facts was upon the railroad company.

The list when filed in the land office, should have all things that are required by law and the rules of the depart-

ment, accompany the selection in order to make a valid list. Between the Government and the railroad company, if so disposed (no other rights intervening), the want of these requirements might be waived, but the plaintiff denies the right of the Secretary, when the list is before him and the rights of private individuals may be affected, to waive any of these requirements for the benefit of a railroad company.

20 VI.

And the plaintiff further says, that by the 3rd section of the granting act the Northern Pacific Railroad Company was to receive:

"Every alternate section of public land (not mineral), designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through a state."

Congress did not intend to grant to the Northern Pacific Railroad Company twenty alternate sections of land per mile, when the road passed through a state; but the intention was to grant ten alternate sections per mile on each side of said railroad line. The plaintiff avers, and charges the fact to be, that said company had exceeded the amount of land granted to it on the side of the road that the land in controversy is situated, long before the patent for this land was issued to the Northern Pacific Railroad Company.

VII.

The plaintiff further says, that by the act of Congress of July 2, 1864, the Northern Pacific Railroad Company was authorized and empowered to lay out, locate, contract, and furnish, maintain and enjoy a continuous railroad and telegraph line, with the appertenances, beginning at a point on Lake

21 Superior, in the State of Minnesota or Wisconsin, thence westerly to some point on Puget Sound. The question came before the Secretary of the Interior for his decision as to what point on Lake Superior the eastern terminus of said railroad should be fixed, and by a decision of the Department of November 13, 1895, it was declared that the eastern terminus of said road was not farther east than Superior; subsequently, and on the 27th day of August, 1896, the Secretary of the Interior rendered a decision wherein he held that the eastern terminus, or the initial point on Lake Superior of the Northern Pacific Railroad grant, by act of July 2, 1864, to be at Duluth, in accordance with which, on December 24, 1896, the land office prepared a diagram showing the east-

ern terminus of said grant; a copy of which was transmitted to the Duluth Land Office on January 22, 1897.

On July 17, 1897, the Commissioner of the General Land Office addressed a communication to the Register and Receiver of the Duluth land office, of which the following is a copy:

"Department of the Interior,

"General Land Office,

Washington, D. C., July 17, 1897.

"Register & Receiver,

"Duluth, Minn.

Sirs:

"On August 27, 1896 (23 L. D., 204), the Secretary of the Interior rendered a decision wherein he held
22 that the initial point on Lake Superior or the eastern terminus of the grant to the Northern Pacific Railroad Company, was at Duluth, Minnesota, and on December 24, 1896, he approved a diagram prepared by this office showing the eastern terminus of the grant.

"On January 22, 1897, a copy of so much of said diagram as related to, affected lands within your district was transmitted to you for the use and guidance of your office.

"The decision of the Secretary aforesaid, had the effect of restoring to the public domain all lands lying east of said terminal, which had theretofore been withdrawn on account of the grant to said railroad company. Therefore, to the end that all persons interested may have opportunity to present any claim they may have to any of these lands, you will cause to be published for the period of thirty days, in some newspaper of general circulation in their vicinity, a notice referring to said Secretary's decision, which in effect declared that all lands previously withdrawn on account of the grant to the Northern Pacific Railroad Company, and lying east of the terminal established at Duluth, are restored to the public domain, and are subject to disposal at your office. It should be specifically stated in said notice that all persons claiming rights under the provisions of the act of March 3, 1887 (24 Stat. 556), through purchase from the railroad company should come forward and assert their claims at the earli-
est possible date, in order to avoid conflicts which
23 will necessarily arise through entries made under the general laws, your office having no information as to the tracts likely to be claimed under said act."

And the plaintiff further says, that the notice required to be given by the local officers, referred to in the above communication to them from the Commissioner of the General Land Office, was given. No claim of any kind was presented to the local office either by the Northern Pacific Railroad Company, or any other person or persons. On December 17, 1897, Richard B. Jones tendered his application for this land. Proofs were subsequently taken after public notice given, as the law directs, that such proofs would on a certain day be offered and that all persons adversely interested should present their claims to the same. No protest of any kind, by any company or individual, was offered against the right, either of the Government to dispose of this land or the applicant to acquire title thereto. These lands were restored to the public domain by direction of the Secretary and remained public lands up to July 12, 1900, when the Commissioner reinstated the selection list by an order of that date directed to the Register and Receiver, in which appears the following:

"The cancellation, therefore, of the company's selections above referred to, was erroneous, and is hereby resinded and the selections restored to the records, which fact you will please note on your records. The selections will now
24 be duly considered upon their legality otherwise, and in connection with any conflicting claims."

The plaintiff further says, that the reinstatement of the former selections could in no way affect the title of Jones to this land whether the original cancellation of the selection list was the result of an error of the Land Department either in law or in fact; the land remained, until the selection was approved by the Secretary, public land at the disposal of the Government; and if, when the application for this land, now under consideration, was made, or at the date of the completion of the final entry by payment, it was public land, it must have been free and clear from any prior claims—the purchaser by such payment obtained complete title thereto, good against all the world.

The plaintiff further says that on the 28th day of February 1898 (26 L. D., 265), an order was made with reference to the lands within the grant of the Northern Pacific Railroad Company, lying east of the terminal as established at Duluth, in which the following appears:

"As a matter of proper administration, and of due regard to the settlers and others attempting to acquire these lands, and as a matter of due regard to the possible rights of the

railroad company, it is directed that the odd-numbered sections available to the company's grant, within the primary limits, and those selected within the indemnity limits formerly recognized, to the east of the terminus established
25 by the departmental ruling in question, be suspended from entry pending the judicial determination of the courts of the question in controversy. While entry of these lands will not be allowed during this suspension, yet in all cases where entries have been heretofore allowed, the parties will be permitted to complete the same by making proof thereon, but the issue of patent will be suspended until such judicial determination."

The plaintiff further shows, that on April 4, 1898 (26 L. D., 188), the department issued instructions in explanation of its order of February 28, 1898, above referred to, based upon an inquiry from the register of the Duluth land office asking—

"Will the office, after taking proof in homestead entry, timber and stone entry, heretofore allowed, accept payment, issue final receipts and final certificates? Referring to suspended Northern Pacific land east of Duluth."

To which the Department replied,

"The question raised oy the telegram from the register at Duluth is as to his authority, upon the making of final proof upon entries heretofore allowed, to accept payment and issue final receipts and certificates upon such entries.

"It is not the intention of this Department to require of these entrymen that they make payment at the time
26 of their proof, due to the pendency in the courts of the question as to the legality of the company's claim to these lands, but where the money is tendered, the usual final receipt and certificate will be issued, if the proof is otherwise regular and satisfactory; but upon the final certificate issued by the register, and the duplicate final receipt given to the entryman, will be noted in red ink, across the face of each, the following—

" 'This receipt (or certificate) is issued under the order of the Secretary of the Interior dated February 28, 1898, subject to any claim the Northern Pacific Railroad Company may have to the land herein described.' "

The plaintiff further says, that the Secretary of the Interior was not authorized to add to the receipt or certificate what said instructions directed should be written in red ink, across the face of said paper.

VIII.

The plaintiff further says, that under the provisions of the act of Congress of July 1, 1898, he is fully protected in his claim of title to the land in controversy. The construction of the act, as shown in Exhibit "B" attached to this complaint, by the decision of the Secretary, destroys the title of the complainant to this land. It is for the purpose of obtaining a judicial construction of this act that this action is brought. In applying the provisions of the act to the claim presented, the only contention in this controversy is as to the construction that should be given to claims arising under the timber
27 and stone law, where the application is tendered prior to January 1, 1898, to enter a tract of land, but the entry is not completed by payment until subsequent to that date.

The Department's construction of the act is that a claimant to be entitled to its provisions must either be a settler on the tract, or a purchaser of the land prior to January 1, 1898. The plaintiff contends that the act of July 1, 1898, was intended to have a wider scope.

The act in specific terms embraces all qualified persons, who had, prior to January 1, 1898, initiated a claim to the land in good faith under color of title, or claim of right, under any law of the United States, or any ruling of the Department; whether the claimant be a settler, or an entryman, or a purchaser, or whether he had completed his entry by payment prior to January 1, 1898, or whether his claim rests on a simple application made prior to January 1, 1898.

The plaintiff further shows, that subsequent to the date of the act, and on February 11, 1899, the Department issued a circular regulating the adjustment under the act (28 L. D., 103). In paragraph 1, Subdivision "A", under the head of "Who Are the Beneficiaries Under the Act", appears the following:

"Par. 1. The act designates a class of beneficiaries whose status is that of claimants adverse to the Northern Pacific Railroad Company, or its successor in interest, and in doing so, different words and terms of description are used
28 in different portions of the act, but considering the act in its entirety and giving due recognition to each provision therein, this class embraces any qualified person who prior to January 1, 1898, by settlement, initiated, in good faith, a claim to lands of the description given, under color of title or claim of right, under any law of the United States, or any

ruling of the Interior Department, and who is still maintaining such claim conformably to such law or ruling."

Subdivision "C" designates what claim to this class of lands comes within the provisions of the act.

"Par. 8. An individual claim adverse to the railroad claim is one which, prior to January 1, 1898, was initiated in good faith by some qualified person, by settlement, entry, or purchase, 'under color of title, or claim of right, under any law of the United States, or any ruling of the Interior Department', and which is still maintained conformably to such law or ruling, and is one which, in the absence of the railroad claim, could be perfected into full title."

The plaintiff further says, that by the circular of the Department dated February 11, 1899 (28 L. D. 105), Par. 2, referring to who is the lawful successor of the Northern Pacific Railroad, the department finds, upon examination of a certified copy of the records in the foreclosure of a mortgage given by the Northern Pacific Railroad Company, that the Northern Pacific Railway Company is the lawful
29 successor in interest as to all lands within the limits of the grant, excepting those situated within the State of Minnesota, and in the State of North Dakota, east of the Missouri River. As to all lands within these limits, the Northern Pacific Railroad Company had no successor.

On November 21, 1899 (29 L. D., 316), the departmental regulations of February 11, 1899, were so modified as to recognize the Northern Pacific Railway Company as the lawful successor in interest as to all lands within the limits of the grant to the Northern Pacific Railroad Company. This conclusion of the Department was based on the following:

"There have been filed in this department examined copies of special master and receiver's deed, dated September 22, 1899, conveying to the Northern Pacific Railway Company all the rights of the Northern Pacific Railroad Company in and to the lands east of the Missouri River, whether under the grant expressed in the Act of Congress of July 2, 1864, or under any subsequent grant, by way of indemnity or otherwise, subject, however, to a certain mortgage, or trust deed dated the first day of January, 1881, and known as the general first mortgage of said Northern Pacific Railroad Company, and executed by it to the Central Trust Company of New York, as trustees; also a certificate of satisfaction of said general first mortgage, said certificate having been duly executed by the

Central Trust Company of New York on the 13th inst. In view of the showing above referred to, the circular
30 of February 14, last, will be modified so as to recognize the Northern Pacific Railway Company as the lawful successor in interest as to all the lands within the limits of the grant provided for in the acts making grants to the Northern Pacific Railroad Company."

The plaintiff further shows, that Congress has never recognized the Northern Pacific Railway Company as in any way the successor of the Northern Pacific Railroad Company, but by the act of July 1, 1898, declared that—

"The legal question, whether the said Northern Pacific Railway Company is such lawful successor of the said Northern Pacific Railroad Company, should the question be raised, shall be determined wholly without reference to the provisions of this act."

The plaintiff further says, that it is not in the power of the Secretary of the Interior nor the Attorney General of the United States to finally determine the question as to who is the successor, if any exist, to the Northern Pacific Railroad Company; and the plaintiff says that there is no evidence showing that the Northern Pacific Railway Company is the successor of the Northern Pacific Railroad Company, and that fact is here denied.

X.

The plaintiff further shows, that under the provisions of Section 10 of the act of July 2, 1864, entitled "An Act Granting Lands to Aid in the Construction of a Railroad and Tele-
graph Line from Lake Superior to Puget Sound, on
31 the Pacific Coast by the Northern Route" it was enacted—

"That all people of the United States shall have the right to subscribe to the stock of the Northern Pacific Railroad Company until the whole capital named in this act of incorporation is taken up, by complying with the terms of subscription; and no mortgage or construction bonds shall ever be issued by said company on said road, or mortgage or lien made in any way, except by the consent of the Congress of the United States."

The plaintiff further says that on the 31st day of May, 1870, Congress passed a joint-resolution having reference to the Northern Pacific Railroad Company, in which appears the following:

"That the Northern Pacific Railroad Company be, and hereby

is, authorized to issue its bonds to aid in the construction and equipment of its road, and to secure the same by mortgage on its property and rights of property of all kinds and descriptions, real, personal and mixed, including its franchise as a corporation."

The plaintiff says, that under this joint-resolution, only one mortgage could have been given; after this mortgage had been executed, the power conferred by said joint-resolution upon the Northern Pacific Railroad Company was exhausted, and any subsequent mortgage given by said company would be ineffectual as a lien upon its property.

The plaintiff further shows that the claim of title by the defendants to said land is derived from the Northern
32 Pacific Railway Company who derived title from a patent issued by the United States; but said patent was issued to the said Northern Pacific Railway Company under a mistake of law and without authority. It appears, however, that an action was brought in the Circuit Court of the United States for the Eastern District of Wisconsin by the Farmers Loan & Trust Company against the Northern Pacific Railroad Company, Philip B. Weston, George R. Seldon, William S. B. Prentice, William C. Sheldon, Jr., surviving partners of the firm of William C. Sheldon & Company, to foreclose a second mortgage given by said Northern Pacific Railroad Company to the complainant covering its property west of the Missouri River. Such proceedings were had therein that a decree of foreclosure was rendered, and the property supposed to be covered by said mortgage, sold, and bid in by the Northern Pacific Railway Company. The lands east of the Missouri River supposed to belong to the Northern Pacific Railroad Company, were not covered by said mortgage, but by an order of the court dated June 5, 1899, were ordered sold by a special master. The United States was not made a party to these proceedings. The petitioners for said order were the receivers of the Northern Pacific Railroad Company, and such proceedings were taken in said court that it was "ordered and decreed that the prayer of said petitioner be and the same is granted, and that all the lands granted by Congress in aid of the construction and equipment of the railroad of the defendant, the Northern Pacific Railroad Company and
33 all the rights of said defendant under the several land grants made to it by Congress, in any such lands lying within the State of Minnesota, and State of North Dakota, east of the Missouri River, shall be sold at public sale to the highest bidder, in the following manner:

"1. Such sale shall be made by Alfred L. Cary, Esq., hereby

appointed special master for that purpose, who is hereby required to report his doings hereunder.

"II. All of said lands for which letters patent have issued to said defendant Northern Pacific Railroad Company, and the right to receive lands for which letters patent have not issued but which have been certified to said company, shall be sold in single sections, or subdivisions thereof, and all lands for which patents have not issued, and which have not been selected by, and certified to said company, but to which said Northern Pacific Railroad Company is entitled under said grants of Congress, and all rights of said Northern Pacific Railroad Company to receive from the United States any lands which have not been certified or patented to said railroad Company, whether under the grant expressed in the act of Congress of July 2, 1864, or any subsequent grant, together with all the right, title, interest and claim in or to said lands, and all its rights to receive from the United States patents therefor; and also all right, title, interest and equity in and to any other lands to which said Northern Pacific Rail-
34 road Company may be entitled, and which may have accrued or shall hereafter accrue to it under any of said land grants; and also all right, title, equity and interest in and to any lands covered by or included in any of said land grants and not hereinbefore specified, shall be sold in one parcel as to such lands and rights in each county, at the following places," etc.

The land in controversy being in St. Louis County, the order says:

"All of said lands and rights to Lands within the County of St. Louis, in the State of Minnesota, shall be sold at the Court House of said County at Duluth."

The plaintiff contends that the court was without authority to make this sweeping order, that there was no mortgage covering the lands of the company lying east of the Missouri River, and the act of Congress of July 2, 1864, Section 10, expressly forbid creating a lien upon the real or personal property of said company, consequently no lien could be created upon said lands by any order of the court.

The plaintiff further shows that in pursuance of said order, and in compliance therewith, the special master named did subsequently execute the same, and report that he did sell to the Northern Pacific Railway Company in consideration of the sum of $117,700.

"All of said lands within the County of St. Louis, in the State of Minnesota, for which patents had not issued, and

which had not been selected by and certified to said
35 Northern Pacific Railroad Company, but to which said railroad company was entitled under said grants of Congress, and all right of said railroad company to receive from the United States any lands within said county and state which had not been certified or patented to said railroad company, whether under the grant expressed in the act of Congress of July 2, 1864, or any subsequent grant by way of indemnity or otherwise, to said railroad company, together with all the right, title and interest and claim in or to any such lands and all its rights to receive from the United States patents therefor, and also all mineral and other reservations and exceptions of every nature and description contained in any conveyance or contract in respect of lands within said county and state at any time made by said railroad company or its receiver, or otherwise, and all rights, benefits, equity of redemption, title, interest or claim of said railroad company thereunder, and in and to all lands granted to it by the Congress of the United States within said county and state, and which might not be included in the sales under said decrees under the foregoing description of lands, for which letters patent had issued to said railroad company, and the right to receive lands for which letters patent had not issued, but which had been selected by and certified to said company, whether or not such lands were then held by or had been theretofore sold or contracted to be sold, by said railroad
36 company, or such receiver, or were claimed to have been sold under judicial proceedings, or for non-payment of taxes or for any cause soever, and whether or not the same stood in the name of said railroad company, it having been the intention to include every possible right, title and interest of said railroad company in and to any lands within said county and state covered by any grant to said railroad company by the Congress of the United States, and which might not be included in the sale under said decree under the foregoing description of lands for which letters patent had issued to said railroad company, and the right to receive lands for which letters patent had not issued, but which had been selected by and certified to said company, all subject, however, to a certain mortgage or trust deed, dated the first day of January, 1881, known as the General First Mortgage of said Northern Pacific Railroad Company, and executed by it to the Central Trust Company of New York as trustees, were offered and sold as one parcel, and were struck off to the Northern Pacific Railway Company."

This plaintiff further shows that on the 22nd day of September, 1899, Alfred L. Cary, as special master, by deed of

even date, attempted to convey to the Northern Pacific Railway Company the real and personal property reported by him to have been sold as above stated. In this conveyance no lands were described by legal subdivision or otherwise.

37 There appears in the deed the following recital:

"And whereas, at such sale all of said lands within the County of St. Louis, in the State of Minnesota, for which patents had not issued, and which had not been selected by and certified to said Northern Pacific Railroad Company, but to which said railroad company was entitled under said grant of Congress, and all rights of said railroad company to receive from the United States any lands within said county and state which had not been certified or patented to said railroad company, whether under the grant expressed in the act of Congress of July 2, 1864, or under any subsequent grant by way of indemnity or otherwise, to said railroad company together with all the right, title, interest and claim in or to any such lands and all its rights to receive from the United States patents therefor, and also all mineral and other reservations and exceptions of every nature and description contained in any conveyance or contract in respect to lands within said county and state at any time made by said railroad company or its receiver or otherwise, and all rights, benefits, equity of redemption, title, interest or claim of said railroad company thereunder, and in and to all lands granted to it by the Congress of the United States within said county and state, and which might not be included in the sales under said decrees under the foregoing description of lands for which letters patent had issued to said railroad com-

38 pany, and the right to receive lands for which letters patent had not issued, but which had been selected by and certified to said company, whether or not such lands were then held by or had theretofore been sold or contracted to be sold by said railroad company or such receivers, or were claimed to have been sold by said company or such receivers, or were claimed to have been sold under judicial proceedings, or for non-payment of taxes or for any cause soever, and whether or not the same stood in the name of said railroad company, it having been the intention to include every possible right, title and interest of said railroad company in and to any of the lands within said county and state covered by any grant to said railroad company by the Congress of the United States, and which might not be included in the sale under the said decree under the foregoing description of lands for which letters patent had issued to said railroad company and the right to receive lands for which letters patent had not issued, but which had been selected by, and certified to, said railroad company—

all subject, however, to a certain mortgage or deed of trust dated the first day of January, 1881, known as the General First Mortgage of said Northern Pacific Railroad Company, and executed by it to the Central Trust Company of New York, as trustees, were offered and sold in one parcel and were struck off to the Northern Pacific Railway Company."

39 And this plaintiff further shows, that at the time of the sale above referred to, the Northern Pacific Railroad Company had no interest visible or invisible upon which the same could attach. The land in controversy was located within the second indemnity of its grant, and its selections had been canceled and the land restored to the public domain; and no title to this land was in the Northern Pacific Railroad Company, until the selection had been made, and the selection approved by the Secretary of the Interior, such sale conveyed no title to the land in controversy.

XII.

And this plaintiff further shows that the Northern Pacific Railway Company, the pretended purchaser of this land under the order of the court heretofore mentioned at the sale of the property of the Northern Pacific Railroad Company by the special master as hereinbefore recited, had no power or authority to purchase the same, and the patent issued by the United States to the Northern Pacific Railway Company for this land, was issued without authority under a mistake both of law and fact.

The Northern Pacific Railway Company is the successor of the Superior & St. Croix Railroad Company, which was incorporated under the laws of the State of Wisconsin, and the Northern Pacific Railway Company succeeded to all the rights that the said Superior & St. Croix Railroad Company possessed, but no other or greater rights. That the legislature of Wisconsin did not grant to that company any authority to
40 hold and possess lands, other than such as might be necessary for the operation of said railroad. A copy of the act to incorporate the Superior & St. Croix Railroad Company, and the acts amendatory thereof and supplimental thereto, and the proceedings taken to change the corporate name of the Superior & St. Croix Railroad Company to Northern Pacific Railway Company is hereunto annexed marked Exhibit "D", and made a part of your plaintiff's bill of complaint.

XIII.

To the end, therefore, that Frederick Weyerhauser and John A. Humbird may respectively, full, true, direct and perfect

answers make, according to the best of their respective knowledge, information and belief, to all and singular the matters and charges aforesaid, and that as fully and particularly in every respect as if the same were here again repeated and they were thereunto particularly interrogated; and more especially that they may respectively set forth the particular sources from which their title to this land is derived, and whether such title is not deraigned from the United States through the Northern Pacific Railway Company, and other [mesne] conveyances, in the manner and form as herein stated.

That this action is brought to establish and declare this plaintiff's rights.

Wherefore, this plaintiff prays that this Honorable Court by its decree, will adjudge and decree that said defend-
41 ants hold the title to said land as trustees for the benefit of this plaintiff; and that defendants convey said land to him in fulfillment of said trust, and that the defendants and their heirs, and assigns, and all persons claiming or to claim by or under them, be forever barred and enjoined from claiming any title, right or interest in said land adverse to this plaintiff; and for such other relief as may be equitable and just.

And this plaintiff further says that the above described land is principally valuable for the timber thereon, and unless the defendants are restrained by an order of this court, the defendants will cause said timber to be cut and removed, and therefore this plaintiff prays that the defendants may be perpetually enjoined from cutting or removing from the land any timber standing or lying thereon, and that they may be similarly restrained, during the pendency of this action, from cutting or removing said timber from said land.

May it please this court to grant unto this plaintiff the writ of injunction, enjoining and restraining the defendants during the pendency of this cause, from selling or disposing of, or removing any timber cut, or caused to be cut by them, or by any person under the direction from the aforesaid premises, and from cutting or removing or selling, or disposing of, any timber now standing, or lying upon the said premises, or from cutting or attempting to create any charge upon the same, or any of said timber standing or lying thereon, or cut therefrom.

H. H. HOYT,

Solicitor and Counsel for Plaintiff. 310 Manhattan Building, Duluth, Minn.

42 State of Minnesota,
County of St. Louis—ss.

On this 1st day of October, A. D. 1905, before me personally appeared the above named Herbert H. Hoyt, and made oath that he has read the above bill subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated to be on his information and belief, and as to those matters he believes it to be true.

[Notarial Seal]

JOHN ARNOL KEYES,
Notary Public, St. Louis Co., Minn.

43 Exhibit A.

Timber and Stone Lands.—Sworn Statement.

(To be made in duplicate.)

Land Office at Duluth, Minn.

Dec. 17, 1897.

I, Richard B. Jones, of Duluth, County of St. Louis, State of Minnesota, desiring to avail myself of the provisions of the act of Congress of June 3, 1878, entitled "An Act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory", as extended to all the Public Land States by act of August 4, 1892, for the purchase of the SW¼ SE¼ of Section 7, Township 54, of Range 14, in the district of lands subject to sale at Duluth, do solemnly swear that I am a native of the United States of the age of 24, and by occupation Express Driver, that I have personally examined said land, and from my personal knowledge state that said land is unfit for cultivation, and valuable chiefly for its timber; that it is uninhabited; that it contains no mining or other improvements, nor, as I verily believe, any valuable deposit of gold, silver, cinnabar, copper, or coal; that I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with
44 any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself, and my post-office address is Duluth.

RICHARD B. JONES.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that

said affiant is to me personally known, and that I verily believe him to be the person he represents himself to be; and that this affidavit was subscribed and sworn to before me this 17th day of December, 1897.

F. L. RYAN, Receiver.

Timber Land, Act June 3, 1878.—Notice for Publication.

United States Land Office.

Duluth, Minn., Dec. 17, 1897.

Notice is hereby given that in compliance with the provisions of the act of Congress of June 3, 1878, entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada and Washington Territory," as extended to all the Public Land States by act of August 4, 1892, R. B. Jones, of Duluth, County of St. Louis, State of Minnesota, has this day filed in
45 this office his sworn statement No. 3377, for the purchase of the SW SE of Section No. 7, in Township No. 54, Range No. 14, and will offer proof to show that the land sought is more valuable for its timber or stone than for agricultural purposes, and to establish his claim to said land before the R. & R. of this office at Duluth, Minn., on Tuesday, the 22d day of March, 1898.

He names as witnesses:

NICHOLAS BANGS,
DAVID BANGS,
ALEXANDER FRAZER,
WIRT H. COOK,
All of Duluth, Minn.

Any and all persons claiming adversely the above described lands are requested to file their claims in this office on or before said 22d day of March, 1898.

WM. E. CULKINS, Register.

Certificate as to Posting of Notice.

United States Land Office.

March 22, 1898.

I, Wm. E. Culkin, Register of the Land Office, certify
Ques. 4.—Is it occupied, or are there any improvements that the above notice was by me posted in a con-
46 spicuous place in my office during the period of sixty (60) days and over, I having first posted the same on the 17th day of Dec., 1897.

I further certify that there are no adverse claims to the land herein described known to this office.

WM. E. CULKINS, Register.

Testimony of Witness under Acts of June 3, 1878, and August 4, 1892.

Nicholas Bangs, being called as a witness in support of the application of Richard B. Jones to purchase SW¼ SE¼ of Section 7, Township 54 N of Range 14 W 4th P. M., testifies as follows:

Question 1. What is your age, post-office address, and where do you reside?

Answer. 45 years; Duluth; same place.

Ques. 2. Are you acquainted with the land above described by personal inspection of each of its smallest legal subdivisions? Ans. Yes.

Ques. 3. When and in what manner was such inspection made?

Ans. Fore part of Dec., 1897; waked all over the land.

on it not made for ditch or canal purposes or which

47 were not made by, or do not belong to the said applicant? Ans. No.

Ques. 5. Is it fit for cultivation? Ans. No.

Ques. 6. What causes render it unfit for cultivation?

Ans. Too stony.

Ques. 7. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are, and whether the springs or mineral deposits are valuable. Ans. No.

Ques. 8. Is the land more valuable for mineral or any other puposes than for the timber or stone thereon, or is it chiefly for timber or stone? Ans. Chiefly valuable for timber.

Ques. 9. From what facts do you conclude that the land is chiefly valuable for timber or stone?

Ans. Because the land is covered with a fair growth of salable pine timber.

Ques. 10. Do you know whether the applicant has directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which he may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except himself? Ans. No.

Ques. 11. Are you in any way interested in this ap-

48 plication, or in the lands above described, or the timber or stone, salines, mines, or improvements of any description whatever thereon? Ans. No.

NICHOLAS BANGS.

I hereby certify that each question and answer in the foregoing testimony was read to the witness before he signed his

name thereto, and that the same was subscribed and sworn to before me this 22d day of March, 1898.

WM. E. CULKINS, Register.

Timber and Stone Lands.

Testimony of Claimant.

Richard B. Jones, being called as a witness in support of his application to purchase the SW¼ SE¼ of Section 7, Township 54 N, Range 14 W 4th P. M., testifies as follows:

Question 1. What is your age, post-office address, and where do you reside? Answer. 24; yes; Duluth, St. Louis Co.

Ques. 2. Are you a native born citizen of the United States; and if so, in what State or Territory were you born?

Ans. Yes; Penn.

Ques. 3. Are you the identical person who applied to
49 purchase this land on the 17th day of Dec., 1897, and made sworn statement assigned by law before the Register (or Receiver) on that day?

Ans. Yes.

Ques. 4. Are you acquainted with the land above described by personal inspection of each of its smallest legal subdivisions?

Ans. Yes.

Ques. 5. When and in what manner was such inspection made?

Ans. About Dec. 1, 1897; walked over the land.

Ques. 6. Is the land occupied; or are there any improvements on it not made for ditch or canal purposes, or which were not made by or do not belong to you?

Ans. No—none.

Ques. 7. Is the land fit for cultivation, or would it be fit for cultivation if the timber were removed?

Ans. No.

Ques. 8. What is the situation of this land, and what is the nature of the soil, and what causes render the land unfit for cultivation?

Ans. It is rolling land generally too stony and rocky.

Ques. 9. Are there any salines, or indications of deposits of gold, silver cinnabar, copper, or coal on this land? If so state what they are, and whether the springs or mineral deposits are valuable.

50 Ans. No.

Ques. 10. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

Ans. Chiefly valuable for timber.

Ques. 11. From what facts do you conclude that the land is chiefly valuable for timber or stone?

Ans. The standing timber is the only thing of any value on the land.

Ques. 12. What is the estimated market value of the timber standing upon this land?

Ans. About $500.00.

Ques. 13. Have you sold or transferred your claim to this land since making your sworn statement or have you directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States may inure, in whole or in part, to the benefit of any person except yourself?

Ans. No.

Ques. 14. Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person?

Ans. Yes.

Ques. 15. Has any other person than yourself, or has any firm, corporation, or association any interest in the en-
51 try you are now making, or in the land, or in the timber thereon?

Ans. No.

RICHARD B. JONES.

I hereby certify that the above-named Richard B. Jones, personally appeared before me; that I verily believe affiant to be the person he represents himself to be and that each question and answer in the foregoing testimony was read to him in my presence before he signed his name thereto, and that the same was subscribed and sworn to before me at Duluth, this 22nd day of March, 1898.

WM. E. CULKINS, Register.

I hereby certify that I have tested the accuracy of affiant's information, and the bona fides of this entry by a close and sufficient oral cross-examination of the claimant and his witnesses, directed to ascertain whether the entry is made in good faith for the appropriation of the land to the entryman's own use and not for sale or speculation, and whether he has conveyed the land or his right thereto, or agreed to make any such conveyance, or whether he has directly or indirectly entered into any contract or agreement in any manner with any person or persons whomsoever by which the title that may be acquired by the entry shall inure in whole or in
52 part to the benefit of any person or persons except himself, and am satisfied from such examination

that the entry is made in good faith for entryman's own exclusive use and not for sale or speculation, nor in the interest nor for the benefit of any other person or persons, firm, or corporation.

WM. E. CULKIN, Register.

4-371.

(The testimony of two witnesses, in this form, taken separately, required in each case).

Testimony of Witness Under Acts of June 3, 1878, and August 4, 1892.

Alexander Fraser, being called as a witness in support of the application of Richard B. Jones to purchase the SW^1_4 SE^1_4 of Section 7, Township 54 N of Range 14 W. 4th P. M., testifies as follows:

Question 1. What is your age, post-office address, and where do you reside?

Answer. 55 yrs; Duluth; same place.

Ques. 2. Are you acquainted with the land above described by personal inspection of each of its smallest legal subdivisions?

Ans. Yes.

Ques. 3. When and in what manner was such inspection made?

53 Ans. July, 1897; walked over it.

Ques. 4. Is it occupied, or are there any improvements on it not made for ditch or canal purposes or which were not made by, or do not belong to, the said applicant?

Ans. No.

Ques. 5. Is it fit for cultivation?

Ans. No.

Ques. 6. What causes render it unfit for cultivation?

Ans. Too Stony.

Ques. 7. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are and whether the springs or mineral deposits are valuable.

Ans. No.

Ques. 8. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

Ans. Chiefly for timber.

Ques. 9. From what facts do you conclude that the land is chiefly valuable for timber or stone?

Ans. Because the land is fairly well covered with merchantable pine timber.

Ques. 10. Do you know whether the applicant has directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which he may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except himself?

54 Ans. No.

Ques. 11. Are you in any way interested in this application, or in the lands above described, or the timber or stone, salines, mines or improvements of any description whatever thereon?

Ans. No.

I hereby certify that each question and answer in the foregoing testimony was read to the witness before he signed his name thereto, and that the same was subscribed and sworn to before me this 22nd day of March, 1898.

WM. CULKIN, Register.

Affidavit.

U. S. Land Office at Duluth Minn.

March 22, 1898.

I, Richard B. Jones, of Duluth, Minn., applying to enter (or file for) a Timber Claim, do solemnly swear that since Aug. 30, 1890, I have not entered under the land laws of the United States or filed upon, a quantity of land agricultural in character and not mineral, which with the tracts now applied for would make more than 320 acres.

RICHARD B. JONES.

Sworn and subscribed before me this 22nd day of
55 March, 1898, at my office in Duluth, St. Louis County.

W. E. CULKIN, Register.

The Duluth News Tribune.

Notice of Publication.

State of Minn.,
County of St. Louis—ss.

Came personally before me, Edward Hazer, and being duly sworn, deposes and says, that he is now and during all the time hereinafter mentioned has been one of the publishers and printers of the Duluth News Tribune, a daily newspaper printed and published in Duluth, County of St. Louis, on every day of each week, that he knows of his own knowledge that printed notice of proof of claim hereto attached, cut from the columns of said newspaper, was inserted and printed and

published in said newspaper, once in each week for ten successive weeks, and that all such publications were made in the English language. That said notice was first inserted, printed and published in said newspaper on Saturday the 18th day of December, 1897, and was printed and published therein each and every Saturday thereafter until and including Saturday the 19th day of February, 1898; that during all the time aforesaid said newspaper was a collector of local and general news, comments and miscellaneous literary items and regularly listed and published on every day of each week
56 from a known office of publication, said office being equipped with the necessary printing materials presses and skilled workmen for producing the same and has consisted of not less than four pages of five columns or more to each page, each column not less than 17¾ inches in length and never made up wholly of patent plates or advertisements, and has not been substantially a duplicate of any other newspaper and has been regularly delivered each week to more than 240 paid subscribers and that said newspaper composed and consisting as above set forth, was printed and published in the English language daily and generally circulated in St. Louis County for more than one year next preceding the date of 1st publication of said notice, that the publisher of said newspaper on Oct. 5, 1893, filed with the County Auditor of St. Louis County an affidavit setting forth the facts required by Section 2, Chapter 33, of the laws of the State of Minnesota for the year 1893.

Signed, EDWARD HAZER.

Subscribed and sworn to before me this 19th day of February, 1898.

[Seal] Signed, EDWARD C. WING.

Notary Public, St. Louis County.

57 Timber Land Act, June 3, 1878, Notice for Publication

United States Land Office.

Duluth, Minn., Dec. 17, 1897.

Notice is hereby given that in compliance with the provisions of the Act of Congress of June 3, 1878, entitled "An Act for the Sale of Timber Lands in the States of California, Oregon, Nevada and Washington Territory," as extended to all the public land States by Act of Aug. 4, 1892, Richard B. Jones, of Duluth, County of St. Louis, State of Minnesota, has this day filed in this office his sworn statement No. 3377 for the purchase of the SW¼ of the SE¼, Section 7, Township

No. 54, Range No. 14, and will offer proof to show that the land sought is more valuable for its timber or stone than for agricultural purposes and to establish his claim to said land before the Register and Receiver of this office at Duluth on Tuesday, the 22nd day of March, 1898.

He names as his witnesses Nicholas Bangs, David Bangs, Alexander Frazer and Wirt H. Cook, all of Duluth.

Any and all persons claiming adversely the above described lands are requested to file their claims in this office on or before the 22d day of March, 1898.

(Signed) WM. E. CULKIN, Register.

Duluth New Tribune, Dec. 18, 25, 1897. Jan. 1, 8, 15, 22, 29. Feb. 5, 12, 19, 1898.

58 F. L. C. Exhibit B. G. B. G.
August 30, 1905.

Richard B. Jones,
vs.
Northern Pacific Railroad Co.

The Commissioner of the General Land Office:

This is an appeal of Richard B. Jones from your office decision of December 2, 1901, holding for cancellation his cash entry allowed under act of June 3, 1878 (20 Stat. 89), as amended by the act of August 4, 1892 (27 Stat. 348), for the $SW\frac{1}{4}$ of the $SE\frac{1}{4}$ of Section 7, Township 51 N., R. 14 W., Duluth Land District.

The land in controversy lies within the second indemnity limits of the grant made in aid of the construction of the Northern Pacific Railroad, east of the City of Duluth, provision for which is found in the Joint Resolution of May 31, 1870 (16 Stat. at 373), and was selected by the Northern Pacific Railroad Co. Oct. 17, 1883. This selection remained of record until March 22, 1897, when it was cancelled pursuant to departmental decision in the case of the Northern Pacific Railroad Co. (23 L. D. 204), holding Duluth to be the eastern terminus of the company's grant, but was reinstated by your office letter of May 26, 1900, under the decision of the Supreme Court of the United States in the case of Doherty v. Northern
59 Pacific Railway Company (177 U. S., 421), holding the eastern terminus of the grant to be at Ashland, Wisconsin. Between the date of cancellation of the selection and before it had been reinstated, to-wit, on December 17,

1897, the said Richard B. Jones applied to purchase the tract under the timber and stone acts, supra., and after due publication and proof made entry thereof, December 10, 1898. At the date of the purchase, but not at the date of the application, the tract in controversy, with others, was withdrawn from entry by virtue of departmental order of February 28, 1898 (26 L. D., 265), but there was a provision in the order permitting the completion of all entries theretofore allowed.

It is contended upon the appeal, in substance:

1. That the Northern Pacific Railway Company has no legal or equitable claim upon the United States to be considered the successor in interest to the land-grant rights of the Northern Pacific Railroad Company, and that there is therefore no authority of law for the patenting of lands to the named company.

2. That the company's selection was and is void because no valid basis is assigned.

3. That the selection is irregular and void, because the selected land was not at date of selection the nearest available public land to the section alleged to have been lost in place.

4. That the timber and stone application of Jones, having been presented at a time when the tract in controversy was unappropriated public domain, his application was the equivalent of an entry, and that he thereafter, in accordance with the terms of the order of suspension of February 28, 1898, supra, had the right to complete the same by making proof and payment thereon.

60

5. That such application having been presented, and such proof and payment having been made, he had prior to January 1, 1898, in contemplation of law and within the meaning of the act of July 1, 1898 (30 Stat., 597, 620), purchased the land directly from the United States, that he had an entry prior to January 1, 1898, within the meaning of departmental instructions of February 14, 1899 (29 L. D., 103), and that therefore he is entitled to an adjustment of his claim under said act.

The question of the successorship of the Northern Pacific Railway Company to the land-grant rights of the Northern Pacific Railroad Company was considered by Attorney-General Harmon, February 6, 1897 (21 Opinions, 186), and referring to certain mortgage foreclosure proceedings this department was then advised that it should act upon applications for patents by the railway company upon the same considerations which should govern it in case there had been no foreclosure

and the applications had been made by the old company.

61 It was but recently urged before this Department that said opinion was ill-advised and unsound, both in law and fact. The matter was again submitted to the Attorney-General, and April 12, 1905, Attorney-General Moody considered the question, concluding as follows:

"It seems to me that the decision of my predecessor was correct, and accordingly have to advise you, the Secretary of the Interior, that, in my opinion, you should continue to be governed by the rule there laid down."

This question is not therefore open for further consideration by this Department. Hugh P. Ferguson v. Northern Pacific Railway Company (33 L. D.,—).

Appellant's second contention that the company's selection herein is void because of invalid basis, rests upon the allegation that the basis assigned lies within the overlapping limits of the grant to the State of Minnesota to aid in the construction of a railroad from St. Paul to Lake Superior, made by the acts of May 5, 1864 (13 Stat. 64), and July 13, 1866 (14 Stat. 93), afterwards conferred by the state upon the Lake Superior and Mississippi Railroad Company, and the grant to the Northern Pacific Railroad Company, made by the act of July 2, 1864 (13 Stat. 365); that Congress did not make a double grant within these overlapping limits, and the date of the grant to the Lake Superior and Mississippi Railroad Com-

62 pany being prior to the grant to the Northern Pacific Railroad Company's road opposite the tract, and the tract having been approved to the former company prior to the definite location of the last named company's road, it was not granted to it, and therefore not lost to that company's grant.

This contention is unsound. This base land is not within the limits of the withdrawal of May 26, 1864, made on account of the grant of May 5, 1864, and the case does not therefore fall within the ruling of the Department in the case of Northern Pacific Railroad Co. v. Rooney (30 L. D., 403). It is true the base land was certified under the grant of May 5, 1864, but it was because of the fact that it fell within the indemnity limits of that grant as adjusted to the line of definite location, and was selected after the date of the Northern Pacific land grant, but prior to the definite location of that line of road. No question arises therefore in this case of the right of the Northern Pacific Company to satisfy its loss from its second indemnity-belt where the base land was in law and fact lost

prior to the grant of July 2, 1864. In the case of Northern Pacific Railroad Company (23 L. D., 264), it was held that because of a proviso in the act of July 2, 1864, supra, said company would not be entitled to receive indemnity for any of the losses sustained on account of the grant to the Lake Superior and Mississippi Railroad Company, made by
63 the act of May 5, 1864, between Thomson's Junction and Duluth. This decision was fundamentally wrong. It held that, because of an agreement, amounting to a consolidation between the two companies, whereby the Northern Pacific Company was authorized to use the other company's tracks between Thomson's Junction and Duluth, it thereby adopted this as its line of road between these points, that Duluth being on Lake Superior, the eastern point named in the company's charter, that point was therefore the eastern terminus of its grant, and that it therefore between these points being "upon the line of another railroad route to aid in the construction of which lands" had been therefore granted by the United States, was, because of the proviso above referred to, not entitled to indemnity for lands lost because of the prior grant. This view was declared erroneous by the Supreme Court of the United States in Doherty case, supra, which recognized the extension of the road eastward from Thomson's Junction to Ashland, Wisconsin, as part of the land grant road, and it follows that, as the route of the Northern Pacific Railroad is in no sense upon the same general line as that of the Lake Superior and Mississippi Railroad, the proviso in question is without application, and the contention that the Northern Pacific Company is not entitled to indemnity for this tract must fail.

With regard to the regularity of the indemnity selection of this land there can be no question but that, as or-
64 iginally presented, it was a proper selection under existing departmental regulations, the company at that time being relieved from the specification of a basis for its selections. It is claimed, however, that this selection should not receive departmental approval because there are, or were, at the time said selection was perfected by the assigning of a basis in 1893, available lands nearer to the loss then specified, and the question is therefore presented, whether, admitting the same to be true, the selection is a proper one under the terms of the granting act.

The third, or granting section of the act of July 2, 1864, supra, grants to the Northern Pacific Railroad Company—

"Every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sec-

tions per mile, on each side of said railroad line, as said company may adopt through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any state, and whenever on the line thereof the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of said road is definitely fixed, and a plat thereof filed in the office of the Commissioner of the General Land Office, and whenever prior to said time any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or preempted or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the directions of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections."

65

December 7, 1887, the question as to whether selections could be made within the first indemnity belt of the Northern Pacific land-grant for losses outside of the particular State or Territory in which the same occurred, was submitted to the Attorney-General for opinion, and in consideration thereof, Mr. Attorney-General Garland, in his opinion dated January 17, 1888 (8 L. D., 14, 17), after referring to the clause of the section above quoted providing for indemnity, says:

"The conditions of this indemnity, set forth in detail, under which the right or privileges of selection rests in the company are, lands shall have been lost out of the amount granted; selections must be made by the company of other lands in lieu of them; those selections must be made under the directions of the Secretary of the Interior; selections shall only be of alternate odd-numbered sections, and they must not be more than ten miles beyond the limits of the granted sections. These are all the limitations or conditions provided for by the act of 1864, subject to which the right to select is granted. Interpretation will not warrant the adding or another limitation that the lieu lands must be selected in the same State of Territory in which the lands were lost. To annex such an additional limitation to the words of the grant would be legislation and not construction."

66

It is further provided by said Section 3, of the act of 1864:

"That all mineral lands be, and the same are, hereby excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied and unappropriated lands, in odd-numbered sections nearest to the line of said road may be selected as above provided."

It will be noted that this provision limits the selection of indemnity for losses to the grant on account of mineral lands, to "odd-numbered sections, nearest to the line of said road," etc.

There could be no good reason for attaching an additional condition upon selections made in lieu lands lost to the grant because mineral in character, and it might therefore be urged that it was intended to enlarge the limits within which such selections could be made. Thus, for general indemnity, selections were to be made from 'alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections,' being the granted sections, and for losses on account of mineral lands, to "odd-numbered sections, nearest to the line of said road."

67 Be this as it may, the lands made the basis for the selection in question were not lost to the grant because mineral in character, and the limitation "nearest to the line of said road," differs widely from a requirement that the selection must be nearest the tract lost and made the basis for the selection.

In the case of United States v. Colton Marble and Lime Company (146 U. S., 615, 618), it was said by the court:

"It might well be assumed, that very likely the Atlantic and Pacific Company would be called upon to select from the indemnity lands a portion sufficient to make good the deficiency in the granted limits. That right of selection was a prospective right, and if it was to be fully exercised, no adverse title could be created to any lands within the indemnity limits. Suppose, for instance, it should turn out that only half of the indemnity lands were necessary to make good the deficiency, and that one-half of such lands were well watered and valuable, while the remainder were arid and comparatively valueless, obviously the right of selection would be seriously impaired if it were limited to only the arid and valueless tracts."

In that case the court had under consideration the prospective right of the Atlantic and Pacific Railroad Company to odd-numbered sections within the indemnity limits of its grant, made by act of July 27, 1866 (14 Stat., 292), which
68 grant has the same indemnity provisions as the Northern Pacific act of 1864, with the exception that indemnity for losses to the grant on account of mineral lands is limited to "odd-numbered sections nearest to the line of said road and within twenty miles thereof." With regard to this latter provision it will be noticed that the selection is limited to odd numbered sections within the primary limits of the grant, as

those limits are twenty miles on each side of the road in Territories, thus, in effect nullifying the provision, because the sections from which selections are to be made were specifically granted in place.

The resolution of May 31, 1870, supra, providing for a second indemnity belt to the Northern Pacific grant, before quoted from, merely limits the place of selection to a belt "ten miles on each side of said road, beyond the limits prescribed in said charter," etc.

The act of 1864 and the resolution of 1870 each therefore establish a limit beyond which the company can not go in making its general indemnity selections, but in neither is there any requirement limiting such selections to the lands nearest the sections in which the losses to the grant occur, and to so limit such selections would attach a condition or limitation upon the right of selection not found in the granting acts.

That the right of selection conferred by these acts can not be restricted by the Secretary of the Interior seems clear.
69 His duty in the premises is to supervise the administration of the grant, but this authority does not permit him to abridge or enlarge the laws of Congress. We should see that the selections made in satisfaction of the grant are confined to the lands described in the granting act, but as between different sections, equally within the description contained therein, he can not say which may or which may not be selected, for in so doing he would be denying the railroad company the right to make the selection. See Willamette Valley and Cascade Wagon Road Co. v. Brunner (26 L. D., 357).

Attention has been called to the Circular of August 4, 1885 (4 L. D., 90), relating to railroad indemnity selections and requiring a designation of a loss as a basis for all indemnity selections, in which circular it is said that:

"Where deficiencies exist, for which indemnity is allowed by law, the lieu selections must be made from vacant, unappropriated land within proper sections and limits nearest the granted section in which the loss occurred."

This circular was issued before the opinion of the Attorney-General or the decision of the court referred to. Its main purpose was to require the specification of a loss as a basis for the selection thereby aiding the adjustment of the grant, for it required the designation of a loss as a basis for all selections previously approved and certified as well as for those then pending or thereafter to be made.

70 In respect to the portion of the said circular above quoted, in the manner of proximity between loss and selected tract, in view of what has been said, it can not be considered as a limitation upon the right of selection, but rather as suggesting a manner of designating the losses so as to aid in adjusting the grant. It might also be stated that it is learned upon inquiry at your office, that, at least as to lands within the second indemnity belt, a strict adherence thereto has not been enforced.

In the case of William Hickey (26 L. D., 612), it was held (syllabus):

"Indemnity selections are made under the direction of the Secretary of the Interior, and the enforcement of any requirement in the matter of a specification of a loss is only for his information, and as a bar to the enlargement of a grant, and may be waived whenever he deems such course advisable."

The conclusions hereinbefore reached answer appellant's fourth contention. The railway company's selection was improperly cancelled; the application of Jones initiated no right as against the company, and his purchase no claim which can be recognized by the land department, unless it is protected by the provisions of the act of July 1, 1898, supra, and this question involves consideration of the fifth and last specification of error on appeal.

71 If Jones had purchased this land from the United States prior to January 1, 1898, or if he had prior to that time made an entry thereof within the meaning of the act of July 1, 1898, he is entitled to an adjustment thereunder. It is believed that he had done neither of these things. While the application to purchase was presented prior to the date named, proof and payment were not made until after that date. There was no purchase prior to January 1, 1898. But it is contended that the application of Jones was the equivalent of an entry. No vested right is acquired by a timber and stone application. While such an application, if presented in accordance with the law and for land subject thereto, reserves the land from other disposition by the land department, no right is initiated as against the government, and prior to the submission and acceptance of final proof and the payment of the purchase price, the Secretary of the Interior may suspend the same from disposition and sale under the public land laws. Board of Control, Canal No. 3, State of Colorado v. Torrence (32 L. D., 472). This is precisely what was done in this case. The tract was withdrawn from entry by the order of February 28, 1898, and the purchase of Jones allowed

in violation of that order initiated no right falling within the remedial provisions of the act of July 1, 1898. F. W. Eaton and A. F. Huntoon v. Northern Pacific Railway Company (33 L. D. —).

72

The decision appealed from is affirmed. The papers are herewith returned.

Very respectfully,

THOS. RYAN,
Acting Secretary.

74 Exhibit D.

An Act.

To incorporate the Superior and St. Croix Railroad Company.

The people of the State of Wisconsin represented in Senate and Assembly do enact as follows:

Section 1. That I. W. Gates, R. G. Gates, E. W. Anderson, Jr., Hiram Hayes, S. H. Clough, Hiram Robbins, D. W. Maxon, John J. Talmadge, H. L. Palmer, S. B. Dresser, O. S. Powell and such other persons as may be associated with them who shall become stockholders in the association or corporation hereby created, in accordance with the provisions of this act, shall be and they are hereby created a body corporate and politic by the name and style of the Superior and St. Croix Railroad Company, and by that name shall have perpetual succession, be competent to contract and be contracted with, sue and be sued, implead and be impleaded, answer and be answered, defend and be defended in any court whatever. The said corporation may make, have and use a common seal, which it may alter or renew at pleasure; it shall be capable of acquiring by deed, lease or other conveyance, a fee simple or any less estate in lands, tenements, or easements in the same,

75 and of conveying any such estate or interest by deed, lease or other conveyance, or of holding such estate or interest, or any other estate necessary for the use of said railroad, either real, personal or mixed, and shall have and enjoy all the privileges, franchises or immunities incident to a corporation, and may do and perform all and singular the acts and matters which to any corporation it shall lawfully appertain to do and perform for the well being of said corporation.

Section 2. The said company by this act created is hereby authorized and empowered to survey, locate, and from time to time alter, change and re-locate (so as to not materially to change the route) and to construct and complete, perpetually to have, use and enjoy, maintain and operate the said railroad with one or more tracks or lines, over and along the following routes, that is to say: beginning at some convenient point on the west shore of the Bay of Superior or on the south shore of the Bay of St. Louis in the County of Douglas running thence southerly by route as direct as may be practicable through the counties of Douglas, Burnett, Polk, St. Croix, and Pierre via St. Croix Falls and Hudson to Prescott with a branch or extension running westerly from the above designated place of beginning in Douglas County to such point on the Minnesota boundary north of the Nemadji River as may be deemed desirable by the directors of said railroad company.

Section 3. The company hereby created shall have the
76 perpetual right, power and authority to transport, take and carry property and persons upon said railroad by steam or other power and to receive and store away any property in any of its depots or other buildings, and to make, construct, maintain and use all such switches, turn outs, side tracks as it shall deem necessary, and also to houses, warehouses, car houses and shops, engine houses and all other buildings, fixtures and things for the accommodation of said company and its roads and those using the same. And said railroad company shall have power to connect its road with any other railroad and to operate the same or to run in connection with any such railroad in such a manner as may be agreed upon between the boards of directors of this company and any such railroad. And any railroad company or association having a railroad built or partly built running in the direction of the line of railroad which the railroad company hereby created, is authorized to construct and operate and which this company by its act created shall agree to use or connect with is hereby authorized to make such lease or sale to this company or corporation perpetually or for a limited time of the whole or any part of their railroad so constructed or partly constructed, together with the rolling stock, machinery, buildings, tenements or fixtures, and all other property, real, personal or mixed, of the said company or association, together with its franchises,
rights, privileges and immunities, or to sell the same,
77 and in consideration of such lease or sale to take or receive such rents or payments as may be agreed upon.

Section 4. The said company shall have the right, authority and power, and it is hereby authorized and empowered to construct its railroad along and upon a crop under or over any public or private highway, road or streets, plank road or railroad if the same shall be necessary, but the said company shall put such highway, road, street, plank road or railroad in such condition and state of repair as not to impair or interfere with the free and proper use and also to erect and maintain all necessary bridges for the use of their railroad over any stream of water or water course at such points of crossing the same as said road may be located, with all necessary abutments, piers, arches and foundations.

Section 5. It shall be lawful for the company hereby created, and it shall have the power and authority by its officers, engineers, agents, servants and workmen, to enter upon any land for the purpose of exploring, surveying, locating and determining the routes of said railroads and when said routes or any portion thereof shall be determined by resolution, adopted by its board of directors, it shall be lawful for said company,

and it shall have the right, power and authority by its officers, engineers, agents, contractors, surveyors, servants and workmen, at any time, to enter upon, take possession, occupy and use any land along and including the line of said route not exceeding one hundred feet in width. It shall also be lawful
78 for said company and it shall have the right, power and authority, at any time, to enter upon, take, possess and occupy and use any other lands beyond said limits of one hundred fet which the directors shall, by resolution adopted by them, (a copy of which shall be recorded at the expense of said company in the office of the register of deeds, in the county in which said lands are located), declare to be necessary for the use of said company for the purpose of erecting depot buildings, station houses, machine shops, freight houses, warehouses, engine houses or buildings or fixtures of any kind, or ground about the same, for the convenient operation of the road or for making drains or giving proper direction to water courses, or of directing or changing the channel of water courses, or for the purposes of removing such substances or things as may endanger, obstruct, or interfere with the free use of said road, or for the purpose of depositing earth, gravel, stone, timber or other material for embankments, structures or superstructures necessary to the construction, repair or removal of said road. Said company shall, however, at such time and in such manner as is provided by, and in this chapter and act, be liable to pay the full value of all earth, gravel, stone, timber and land which may be so as aforesaid, taken, possessed, occupied and used for any of the purposes aforesaid, which is the private property of either persons or corporations, which value (unless the owner thereof and said company shall agree as to the same), shall be ascertained and determined in the
79 manner hereinafter provided; and whenever the same shall have been paid, tendered or deposited, as provided in this act, and estate in and to all and every such lands in fee simple, absolute forever, shall be and become vested in said company by virtue thereof, and of the provisions of this act, and by the same means a complete title shall vest in said company in and to all such earth, gravel, stone and timber; and whenever said company shall deem that such property or any part or portion of such property shall no longer be necessary for the purposes for which the same were taken, it is hereby authorized to lease or sell the same or any part thereof.

Section 6. On the completion of said road, or any part thereof, it shall be lawful for said company, and it is hereby authorized and empowered, to demand and receive such sum or sums of money for the transportation of persons and

of property and for the storage of property as it shall from time to time deem reasonable.

Section 7. Said company hereby created shall also have full power and authority to transport persons and property in boats, vessels, barges, and other water craft on any of the navigable waters which its said railroad or roads run to or connect with, and to receive and collect reasonable compensation for the same and for that purpose may build or purchase, own and use such boats, vessels, barges and other water craft as it may require.

Section 8. The company hereby created shall be capable in law of taking and holding any land granted to it by the government of the United States or of this state or by individuals or corporations to aid in the construction of its road and may also pledge, mortgage or otherwise dispose of all their rights, title and interest in and to said lands and in any other estate, real, personal or mixed, of which they may be seized at the time of the execution of such mortgage or which they may acquire subsequently thereto, in such manner and on such terms as the directors may thing proper.

Section 9. All the affairs of said company shall be managed by a board of directors who shall be stockholders and who are hereby invested with all the powers of the corporation. They shall be chosen annually by ballot by the stockholders at the annual meeting of the company, which shall be held on such notice and at such time as shall be prescribed by the by-laws and at such place as shall be prescribed by the board of directors and stated in such notice. At all meetings of the stockholders every stockholder shall be entitled to one vote for each share of stock held by him or her and may vote in person or by proxy duly authorized, and no business shall be transacted at any meeting of the stockholders unless a majority of the stock subscribed is represented. In all elections of directors those stockholders equal to the number to be elected having the greatest number of votes shall be deemed and declared duly elected. The elections shall be conducted in such a manner as shall be prescribed by the by-laws of the company, and if from any cause an election of directors shall not be had at the time when by the provisions of this act or of the by-laws, it should be had, the same may be held at any other time on notice to be given as aforesaid, and until such election be had, the directors of the preceding year shall continue to act and the corporation hereby created shall not forfeit or loose any of its privileges, franchises or immunities for a less period than ten consecutive years. The board may at any time increase or diminish the number of

directors to be elected at the next annual meeting of the stockholders, and the number to be elected shall be specified in the notice of election, but shall never be less than five or more than eleven.

Section 10. A majority of the board of directors shall constitute a quorum for the transaction of any business. They shall meet at such times and places, and be convened in such manner as they shall decide upon. They shall elect one of their own number to be president and one to be vice president. The president shall, when present, preside at all meetings of the board and of the stockholders and when absent the vice president shall discharge the duties of the president, and when both are absent the directors may appoint a president pro tem. The board of directors shall have power to appoint an executive committee and prescribe its powers and duties to appoint a secretary, treasurer and such engineers, superintendents, agents and other officers as they may deem necessary and remove them at pleasure, prescribe their duties and compensation, and may demand adequate security for the discharge of their respective duties and trusts.

82 Section 11. The persons named in the first section shall be the first directors and shall hold their offices until the first Wednesday of May, A. D. 1871, and until others are chosen in their places, and in case of vacancy in the directors, or by reason of the death or resignation of any director, or of his ceasing to be a stockholder, it may be filled by the remaining directors until the next annual election or until some other person shall be elected to fill the same. The directors herein named may appoint three persons, who shall be stockholders to be inspectors at the first election after which the stockholders shall choose three such inspectors at the annual elections. If no inspectors are chosen the directors may appoint three from time to time. If at any time an election of directors shall not take place on the day appointed by this act, the corporation shall not for that cause be dissolved, but an election may be held on another day in such manner as shall be prescribed by the directors or provided for the by-laws.

Section. 12. The said company shall have authority and power and it is hereby authorized and empowered in its corporate capacity to borrow any sum of money from any person or persons, corporation or body politic of any kind, and to make, execute and deliver all the necessary writings, notes, bonds, mortgages, or other papers and securities in amount and kind as may be deemed expedient by said corporation in consideration of any such loan or in the dis-

charge of any liabilities that it may incur in the con-
83 struction, repair, equipment or running of said road and the powers of said corporation for the purposes aforesaid and for all purposes necessary to carry out the objects of said company, viz: the construction of a railroad from and to the points aforesaid, are hereby ratified and confirmed and the contracts and official acts of said company declared binding in law and equity upon said corporation and upon all other parties to such contracts. Said company shall also have authority and power and it is hereby authorized and empowered in its corporate capacity to make, execute, issue and deliver its bonds and obligations from time to time and at any time in such an amount that all the bonds of said company outstanding at any one time will not exceed the amount of the capital stock of said company. The directors of said company are hereby authorized and empowered to prescribe by resolution to be by them adopted, the sum or sums for which each of said bonds shall be issued, the time or times and place or places when and where the principal and interest of the same shall be payable and whether payable to order or to bearer or how otherwise negotiable, the rate of interest which such bonds shall bear and the manner and form in which the interest coupons annexed to them shall be executed; and to secure the payments of any or all of such bonds the said corporation is hereby authorized and empowered in its corporate capacity to make, execute and deliver a mortgage or deed of trust upon the whole or any part of its railroad constructed or authorized to be constructed,
84 and of any or all of its real estate, personal, or mixed in possession or expectancy owned and acquired, or to be thereafter owned and acquired by said corporation; and the said company is also hereby authorized and empowered in and by such mortgage or deed of trust to confer upon the trustees or mortgagees full and ample powers, to enter into and upon, and to take possession of, have, use and enjoy or to sell and dispose of the whole or any part of said railroad or its estate, together with the functions appertaining to said railroad, and all corporate and other franchises, rights and privileges of said corporation; and the directors of said company are herby authorized and empowered to prescribe by resolution adopted by them all matters relating to the form and terms of any such mortgage or deed of trust, and of its execution and delivery, and they are authorized to provide for the periodical payments to such trustee or receiver as they shall appoint a certain sum to create a sinking fund with which to pay off or discharge at or before maturity any or all of the bonds by them authorized to be issued; and also

to provide the manner in which trustee or receiver shall pay out or dispose of said sinking fund, and to authorize him to designate by lot or in any other suitable manner, the bond or bonds to the payment of which such sinking fund or any part of it shall be applied and the said board of directors are hereby authorized and empowered to sell, pledge, hypothecate or otherwise dispose of, either for money, work or material, to be used in the construction and equipment of said
85 railroad, all or any portion of such mortgage bonds, or other securities or bonds received from any county town, village or city at part or at such price less than par as the said directors may, by resolution to be by them adopted, deem advisable; any such mortgage or deed of trust and every discharge or satisfaction thereof may be recorded in the office of the secretary of state in a proper book kept for that purpose and the certificate of such recording endorsed on such mortgage or deed of trust shall have the same effect as if such mortgage or deed of trust was recorded in the several counties through which such road may run, and such record in the office of the secretary shall be sufficient notice to all persons.

Section 13. The company hereby created shall for all and every of the lands and property, which shall appropriate, take, possess, occupy or use (unless the same being donated to them pay the value thereof at the time thereof at the time and in the manner herein provided; and such value shall be ascertained, fixed and determined by mutual agreement between the said company and the owners of such land and property respectively, or by and through the medium and appraisement and determination or award of commissioners appointed as hereinafter provided.

Section 14. When the said corporation shall not agree with the owner or owners of such required land for the purchase thereof or as to the compensation to be paid therefor, or when, by reason of the legal incapacity or of absence of
86 such owner or owners, no such agreement can be made, then and in that case it shall be lawful for any judge of the supreme court or county courts of this state on application of the said company or the owner or owners of any such land and at the cost and charge of said company to appoint three disinterested persons residing in the county through which the said road runs whose duty it shall be to view and examine the lands so taken with the buildings and improvements, if any thereon, and to estimate the value of the lands so taken and required by said company, and all the

damages which the owner or owners thereof shall sustain or may have sustained by reason of the taking of the same for the construction and use of said road or works appertaining thereto. And it shall be the duty of said company or of the owner or owners aforesaid, as the case may be, to give three weeks notice of their application to the judge of the supreme, circuit or county courts, for the appointment of said commissioners to be published for three successive weeks in a newspaper published (if there be any) in the county in which such land may be situated, and the affidavit of the printer or publisher shall be sufficient legal evidence of such publication; and the persons so appointed before entering upon the discharge of such duties shall take an oath before some justice of the peace or other person competent by law to administer oaths, faithfully and to the best of their ability to examine the lands so taken or required by said company and impartially to estimate and appraise the value of the same and the damage or in-
87 jury which the owner or owners thereof shall have sustained or may sustain by reason of the taking and use thereof by said company, whereupon such commissioners shall proceed to examine the premises and estimate the value of such land and the amount of damage, and they, or a majority of them, shall make a report in writing of such valuation under their hands and seals to the circuit court of the county where the land lies, and shall return the same within ninety days after their appointment to the clerk of the circuit court of the county where they reside, and it shall be the duty of the said clerk to immediately file the same; and in case no appeal shall be made within thirty days after the filing of the said report as hereinafter provided then the said clerk shall record the same at the expense of said company and judgment of the said court shall be entered thereon on motion of either party at any term of said court; provided, that either party may appeal to said court within thirty days after said report shall have been filed in the clerk's office and such appeal shall be tried in the same manner as other issues on trial in said court; and the jury impaneled to try the same shall find the value of the land so taken as required by said company and the damages which the owner or owners thereof shall have sustained by the taking of the same and the judgment of the said court shall be entered accordingly; provided, also, that it shall not be lawful for the said commissioners or said court to proceed in the assessment of damages or in the valuation of any land or materials as aforesaid in the absence of the owner
88 or owners, his, her or their agents or attorneys unless it is shown to them by competent testimony that the said owner or owners shall have had at least five days notice of the time and place at which such assessment or valuation

was to be made or that the said owner or owners are absent from the State of Wisconsin and if the said owner or owners shall be minors or non compos mentes or absent from the state the service of notice may be made on the guardian or trustee, if there be any, or in such manner as the court may direct; provided, also, that upon the making and filing of the report as aforesaid and payment in legal tender of the amount of any valuation or appraisal specified therein to the owner or owners of any such lands his, her or their legal representatives or payment thereof into the circuit court of the county in which such lands shall be situated for the owner or owners thereof the said company, their agents or the contractor for making or repairing said railroad, may immediately take and use the same without awaiting the issue of any appeal brought thereon; and, provided, also, that in case of an appeal as aforesaid, by the owner or owners of such land, the said company immediately on notice of the perfection of such appeal shall pay into court to abide the judgment therein the amount awarded by such commissioners, and in case of any appeal by the company it shall be the duty of such company to execute a bond with sufficient surety to be approved by the court, conditioned to pay any judgment that may be rendered
89 therein and to abide by the order of the court in the premises; such bond shall be filed at the time of entering the appeal, and in case of neglect or refusal unless further time so to do shall have been granted by the court, the appeal may be dismissed on motion. Whenever any judgment shall have been entered as herein provided for the value of any lands or for any damages for taking and using the same and the amount specified in such judgment shall have been paid or tendered to the owner or [owner] of such lands, his, her or their legal representatives, the said company shall be entitled to the estate and interest in the same as fully as if it had been conveyed in fee simple and if such valuation be not received when tendered it may at any time thereafter be received or may be collected from said company by action at law at the cost and expense of the person or persons entitled to the same, provided that the costs of any proceedings and judgment specified in the last preceding section shall be taxed by the court and paid by such company except in cases when upon appeal the verdict of the jury shall be for the same or for a less sum than that reported by the commissioners.

Section 15. The capital stock of the company hereby created shall in the first instance be five millions of dollars, which capital stock may be increased to any sum not exceeding ten millions of dollars; the said capital stock to be divided into shares of one hundred dollars each.

Section 16. The several counties, towns, cities and
90 villages upon or contiguous to the line of the said road, by this act authorized to be constructed as the same may be hereafter located and established, are and each of them is hereby authorized to aid in the construction of said railroad by subscribing to the stock of the company and paying for the same in money, and levying a special tax to raise money for that purpose, or by issuing bonds to said company in payment for said stock and levying taxes to pay the interest as it accrues upon said bonds, and to establish a sinking fund for the gradual redemption and ultimate full redemption of said bonds at maturity; and for these purposes the boards of supervisors or officers of such counties or towns; the boards of trustees of such villages, and the common council of such cities respectively and severally shall have power to negotiate and arrange the terms and conditions upon which such aid shall be granted; to enter into all proper contracts with said company in relation to the same and to adopt such ordinances and regulations pertaining thereto or to the taxes to be levied under this act as may be expedient and proper and consistent with law; provided, that before any such aid shall be granted or contracted for by any such county, town, village or city, the question of granting the same shall be submitted to a vote of the electors thereof respectively, as hereinbefore provided.

Section 17. Whenever the president and secretary of the said Superior and St. Croix Railroad Company shall certify under their hands and the seal of the said company to
91 the authorities of any such county, town, city or village that the route of said railroad has been located through or contiguous to such county, town, village or city, it shall be the duty of the authorities thereof hereinbefore mentioned, to call a special election to determine the question whether aid shall be granted to said company in the manner prescribed in the preceding section of this act, such election shall be called, notice thereof shall be given, the form of ballots shall be prescribed and all regulations relating to the same be determined by the proper authorities hereinbefore mentioned, of such counties, towns, villages and cities so that the question be fairly submitted to a vote of the electors. In case at any such election the majority of votes shall be against granting such aid the proper authorities may afterward in their discretion call another election upon the same subject and the same shall be conducted in a like manner.

Section 18. If at any election authorized by this act any such county, town, village or city shall vote in favor of granting such aid by a majority of the votes cast at such election then the authorities thereof shall have and exercise in their

discretion the powers conferred upon them by the preceding sections of this act and all the contracts made by them by virtue thereof shall be valid and enforcible according to the true intent and meaning thereof.

Section 19. The several counties, towns, villages and cities which shall subscribe for the stock of said company as authorized by this act, are hereby authorized severally to
92 own, control and dispose of the same in the same manner as an individual might do, and to vote upon the same by agents, duly authorized, at an election held by the stockholders of the said company.

Section 20. All property which the company hereby created is authorized to appropriate, take, possess, hold or use by making payment therefor, is hereby declared to be taken for public use as soon as the company shall so appropriate, take, possess, hold or use the same.

Section 21. It is hereby declared that in the judgment of the legislature of this state the objects of the corporation hereby created, cannot be attained under the general laws.

Section 22. This act is hereby declared to be a public act and the same immediately after the passage thereof shall be printed by the state printer and be in full force and effect from and after its passage.

J. M. BINGHAM,
Speaker of the Assembly.

THAD. C. POUND,
President of the Senate.

Approved March 15, 1870.
Lucius Fairchild, Governor.

An Act

To amend Chapter 326 of the private and local laws
93 of 1870, entitled "An act to incorporate the Superior and St. Croix Railroad Company."

The People of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

Section 1. Section one of Chapter 326 of the private and local laws of 1870, is hereby amended so as to read as follows: "F. W. Gates, R. G. Coburn, E. W. Anderson, Jr., Hiram Hayes, S. H. Clough, Hiram Robbins, D. W. Maxon, John J. Talmadge, H. L. Palmer, S. B. Dresser, O. S. Powell, James Edwards and Peter E. Bradshaw, and such other persons as may be associated with them, who shall become stockholders in the association or corporation hereby created in accordance with

the provisions of this act, shall be and they are hereby created a body corporate and politic by the name and style of the Superior and St. Croix Railroad Company, and by that name shall have perpetual succession, be competent to contract and be contracted with, sue and be sued, implead and be impleaded, answer and be answered, defend and be defended in any court whatever. The said corporation may make, have and use a common seal which it may alter or renew at pleasure; it shall be capable of acquiring by deed, lease or other conveyance a fee simple or any less estate in lands, tenements or easements in the same, and conveying any such estate or interest by deed, lease or other conveyance, and of holding such estate or interest, or any other estate necessary for the use of the said railroad, either real, personal or mixed, and shall have and
94 enjoy all the privileges, franchises and immunities incident to a corporation, and may do and perform all and singular the acts and matters which to any corporation it shall lawfully appertain to do and perform for the well being of said corporation."

Section 2. Section eleven of said chapter is hereby amended so as to read as follows: "The persons named in the first section shall be the first directors, and unless sooner superseded by an election of directors at the first annual meeting of the company, shall hold their offices until the first Wednesday of May, A. D. 1871, and until others are chosen in their places; and in case of vacancy in the directors, by reason of the death or resignation of any director, or of his ceasing to be a stockholder, it may be filled by the remaining directors until the next annual election, or until some other person shall be elected to fill the same. The directors herein named may appoint three persons, who shall be stockholders, to be inspectors at the first election, after which the stockholders shall choose three such inspectors at the next annual election. If no inspectors are chosen, the directors may appoint three from time to time. If at any time an election of directors shall not take place on the day appointed by this act, the corporation shall not for that cause be dissolved, but an election may be held on another day, in such manner as shall be prescribed by the directors, or provided for by the by-laws."

95 Section 3. This act shall take effect and be in force from and after its passage.

WILLIAM E. SMITH,
Speaker of the Assembly.
THAD. C. POUND,
President of the Senate.

Approved January 20, 1871.
Lucius Fairchild, Governor.

An Act

To amend Section 2, Chapter 326 of the private and local laws of 1870, approved March 15, 1870, entitled "An act to incorporate the Superior and St. Croix Railroad Company."

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

Section 1. Section two of said act is hereby amended so as to read as follows: Section 2. The company by this act created are hereby authorized and empowered to survey, locate and from time to time alter, change and re-locate (so as not materially to change the route,) and to construct and complete, perpetually to have, use and enjoy, maintain and operate the said railroad with one or more tracks or lines, over and along the following routes, that is to say: beginning at some convenient point on the west shore of the Bay of Superior, or on the south shore of the Bay of St. Louis, in the County
96 of Douglas, running thence southerly by a route as direct as may be practicable, through the counties of Douglas, Burnett, Polk, St. Croix and Pierre via. St. Croix Falls and Hudson to Prescott, with a branch or extension running westerly from the above designated place of beginning, in Douglas County, to such a point on the Minnesota boundary, north of Nemadji River, as may be deemed desirable by the directors of said railroad company; provided, said company shall have the right to construct this line of road along the westerly shore of the Bay of Superior, from the extreme end of Connor's Point to the southerly end of said bay, or such point thereof as may be deemed desirable by the directors of said company, and shall have the authority to construct and maintain a bridge across the St. Louis River at any point at or above Connor's Point in said County of Douglas, whenever the same shall be assented to by resolution of the Board of Supervisors of the town of Superior.

Section 2. This act shall be in force after its passage and publication.

W. E. SMITH,
Speaker of the Assembly.

THAD. C. POUND,
President of the Senate.

Approved March 16, 1871.
Lucius Fairchild, Governor.

97 An Act.

To amend Chapter 326 of the private and local laws of 1870, entitled "An act to incorporate the Superior and St.

Croix Railroad Company," and Chapter 328 of the private and local laws of 1871, entitled "An act to amend Section 2, Chapter 326, of the private and local laws of 1870, approved March 15, 1870, entitled "An act to incorporate the Superior and St. Croix Railroad Company."

The People of the State of Wisconsin represented in the Senate and Assembly do enact as follows:

Section 1. Section 2 of Chapter 326 of the private and local laws of 1870, entitled "An act to incorporate the Superior and St. Croix Railroad Company," as amended by Chapter 328 of the private and local laws of 1871, entitled "An act to amend Section 2 Chapter 326 of the private and local laws of 1870," approved March 15, 1870, entitled "An act to incorporate the Superior and St. Croix Railroad Company", is hereby amended so as to read as follows:

Section 2. The said company is hereby authorized and empowered to survey, locate and construct, and to acquire, by purchase or otherwise, and to equip, maintain, operate and perpetually to have, use and enjoy, a railroad or railroads, with one or more tracks from a point or points on the Bay of Superior, at the west end of Lake Superior, in Douglass County, Wisconsin, to be selected by the board of directors, upon such route or routes as such board shall adopt, to such point or points on the Minnesota
98 state line as such board shall select, and thence westward, upon such route or routes as said board shall adopt, to such point or points on the Pacific coast as such board shall select; and from said point or points in Douglas County easterly, upon such route or routes as said board shall adopt to or near Ashland, in the county of Ashland, in the State of Wisconsin, and thence by such route or routes and to such point or points in the State of Michigan as such board shall select; also from said point or points in Douglas county, upon such route or routes as said board shall adopt, through the counties of Douglas, Burnett, Polk, St. Croix and Pierre, or any of them, to Prescott, on the Mississippi river, with a branch from some point in one of said counties to be selected by the board of directors, to St. Paul and Minneapolis, Minnesota, or to either of said places; also from said point or points in said Douglas county or from some point to be selected by such board on any railroad or railroads which the said company is or hereafter may be authorized to construct or otherwise acquire, upon such route or routes as such board shall adopt, through the states of Wisconsin and Illinois, to or into the city of Chicago in the County of Cook, in said last named state. And the said company is further authorized and empowered to survey, locate, construct, and to acquire by purchase or other-

wise, and to equip, maintain and operate, and perpetually to have, use, possess and enjoy, branch lines of railroad from it to main line or lines in and into or through any state or territory of the United States, or extending into or lying within the Dominion of Canada, or any portion or province thereof, from and to such points as shall be determined by such board of directors.

Section 2. Section 3 of said Chapter 326 is hereby amended so as to read as follows: Section 3. The said company shall have the perpetual right, power and authority to transport, take and carry property and persons upon such railroad or railroads, by steam and other motive power, and to receive and store any property in any of its depots or other buildings, including elevators, and to make, construct, maintain, acquire, and use all such switches, turnouts, side tracks, spur and other tracks as it shall deem necessary; and also to construct, erect, acquire and maintain all such depots, station houses, warehouses, car houses, shops, engine houses, elevator and other buildings, fixtures, structures and things necessary or convenient for use by said company in the operation of its railroad and in the transaction of its business as a carrier of freight and passengers. And said company shall have power to connect its railroad or railroads with any other railroad or railroads, and to operate the same under a lease or otherwise, or to run in connection with any such railroad or railroads, in such manner as may be agreed upon between the board of directors of said company and the board of directors of the company or companies owning or operating any such connecting railroad or railroads. And any railroad company, person, association or corporation having a railroad or railroads, constructed or partly constructed running in the direction of the line or lines of railroad which the said company is by this act or may hereafter be authorized to construct, acquire and operate, which said company shall agree to use or connect with, is hereby authorized to make to said company, (created by said Chapter 326), a lease, sale or trackage arrangement, perpetual or for a time limited, of the whole or any part of the said railroad or railroads so constructed or partly constructed, together with the rolling stock, machinery, buildings, tenements or fixtures, and all property, real, personal or mixed, of the said railroad company, person, association or corporation, together with its or their franchises, rights, privileges and immunities, and in consideration of such lease, use or sale, to take or receive such rent, commutation of rental, payment or other consideration as may be agreed upon.

Section 3. Section 4 of said Chapter 326 is hereby amended to as to read as follows: Section 4. Said company shall have

the right, authority and power, and it is hereby authorized and empowered subject to the provisions of section 1836 of the revised statutes, to construct, maintain and operate its railroad or railroads across, along or upon any stream of water, watercourse, street, highway, plank road, turnpike or canal which its route or routes shall intersect or touch; to carry any highway, street, turnpike or plank road which it shall touch, intersect or cross over or under its tracks, as may be most expedient for the public good; to change the course and
101 direction of any highway, street, turnpike or plank road, when made necessary or desirable to secure more easy ascent or descent by reason of any embankment or cut made in the construction of its railroad or railroads, and to take land necessary therefor, provided such highway or road be not so changed from its original course more than six rods, nor its distance thereby lengthened more than five rods. And the said company shall also have power, and it is hereby empowered, to cross, intersect, join and unite its railroad or railroads with any railroad now or hereafter constructed on any point on its route, and upon the grounds of such railroad corporation with the necessary turnouts, sidings and switches and other conveniences, in furtherance of the objects of its connection. And the said company shall also have power, and it is hereby empowered, to erect, purchase and maintain all necessary bridges for the use of its railroad or railroads, main and branch, over any stream of water, or watercourse, at such point or points of crossing the same as said railroad or railroads may be located or constructed, together with all necessary abutments, piers, arches, foundations and other structures.

Section 4. Section 5 of said Chapter 326 is hereby amended so as to read as follows: Section 5. It shall be lawful for the said company, and it is hereby authorized and empowered, by its officers, engineers, servants and workmen to enter upon any land or lands for the purpose of exploring, surveying,
102 locating and establishing the route or routes of said railroad or railroads; and when the said route or routes or any portion thereof shall be determined by resolution adopted by its board of directors it shall be lawful for said company, and it is expressly authorized and empowered, to purchase and hold such land or lands for right-of-way, side-tracks, spur-tracks, watertanks, construction of road bed and maintainance of same, station houses, warehouses, elevators, engine houses, shops, and for such other purposes as may be necessary, usual or convenient for the operation of said railroad or railroads or in connection therewith; and whenever said company cannot agree with the owners and other parties interested in any such land upon the price to be paid therefor, or for the occupa-

tion thereof or for any interest therein, it shall have the right, and it is hereby expressly authorized and empowered, to acquire the same by condemnation proceedings, to the extent and and in the manner provided by Sections 1845 to 1856 inclusive of the revised statutes of 1878.

Section 5. Section 6 of said Chapter 326 is hereby amended so as to read as follows: Section 6. Upon the completion or acquisition of said railroad or railroads, or any part thereof, it shall be lawful for said company, and it is hereby authorized and empowered to demand, collect and receive such sum or sums of money for the transportation of persons and property, and for the storage of property as shall be reasonable.

Section 6. Section 7 of said Chapter 326 is hereby
103 amended so as to read as follows: Section 7. Said company shall also have full power, and it is hereby expressly authorized to carry and transport persons and property in boats, steamships, vessels, barges and other water craft upon any of the navigable waters which its railroad or railroads shall run to, over or connect with, and to demand, receive and collect such compensation for the same as it shall from time to time deem reasonable, and for that purpose the said company is authorized and empowered to build, lease, purchase, own and use, either directly or through a corporation or corporations organized by it or otherwise for the purpose, and whose stock in whole or in part it shall own, such boats, steamships, vessels, barges and other water craft as in its judgment may be necessary or convenient for its use.

Section 7. Section 8 of said Chapter 326 is hereby amended so as to read as follows: Section 8. The said company shall be capable in law of taking, holding and selling any lands granted to it or to any company whose property it shall acquire by the purchase or otherwise, by the government of the United States, or by this state, or by any state or territory through or in which it shall acquire in any manner and operate any railroad or railroads wherever the said lands may be situated, or by grant by persons, companies, corporations or associations, within or without this state, to aid in the construction or operation of any railroad or railroads by it constructed of otherwise acquired, or authorized to be by it constructed
104 or acquired, and the said company may also pledge, hypothecate, mortgage or otherwise dispose of all its right, title and interest in and to said lands, or any part thereof, and in and to any other estate, real, personal or mixed of which it, the said company, may be seized at the time of the execution of any mortgage or deed of trust, or of which it may become seized subsequent to the execution and delivery of any

such instrument or instruments, including its franchise or to be a corporation and to own, maintain and operate such railroad or railroads; and the said company may sell or lease any of its branch roads however acquired, whenever it shall be declared by resolution of the board of directors, subject to the approval of the holders of record of a majority of the outstanding capital stock, that the interests of the company and its stockholders will be thereby subserved.

Section 8. Section 9 of said Chapter 326 is hereby amended so as to read as follows: Section 9. All of the affairs of said company shall be managed by a board of directors who shall be stockholders, and who are hereby invested with all the powers of the corporation save as hereinafter provided. They shall be chosen annually by ballot by the stockholders at the annual meeting of the company, which shall be held on such notice and at such time, as shall be prescribed by the by-laws, and at such place, within or without the state, as shall
105 be prescribed by the board of directors, and stated in such notice. At all meetings of the stockholders each stockholder shall be entitled to one vote for each share of stock held by him under such conditions and regulations as may be prescribed or referred to in the certificates thereof and may vote the same in person or by proxy duly authorized, and no business shall be transacted at any meeting of the stockholders unless a majority of the stock subscribed and outstanding is represented and outstanding. In all elections of directors those stockholders having the greatest number of votes shall be deemed and declared duly elected. Elections shall be conducted in such manner as shall be prescribed by the by-laws of the company, and if for any cause an election of directors shall not be had at the time when by the provisions of this act or by the by-laws it should be had, the same may be held at any other time, on notice to be given as aforesaid, and until such election be had the directors of the preceding year shall continue to act, until their successors are duly elected and qualified. The company may at any time increase or diminish the number of directors to be elected at the next annual meeting of the stockholders, and the number to be elected shall be specified in the notice of meeting, but shall never be less than five nor more than seventeen; and the said company may by vote of the majority of the stockholders, present or represented at any annual meeting, classify its directors into three classes, each of which shall be composed as nearly as may be
106 of one-third of the directors, the term of office of the first class to expire in one year, of the second in two years, and of the third in three years. At each annual election thereafter a number of directors shall be elected for three years

equal to the number whose term of office shall then expire. All vacancies shall be filled in accordance with the by-laws.

Section 9. Section 10 of said Chapter 326 is hereby amended so as to read as follows: Section 10. A majority of the board of directors shall constitute a quorum for the transaction of business. They shall meet at such times and be convened in such manner as the by-laws shall prescribe, and at such places as the board shall decide upon. Whenever all the members of the board of directors are present at any meeting it shall be competent for them, having signed upon the minutes a waiver of notice of meeting, to transact business as fully to all intents and purposes as if the said meeting had been duly convened pursuant to notice. They shall elect one of their own number to be president, and one to be vice-president, and they may elect additional vice-presidents and such other officers of the board, and impose upon them such duties, and confer upon them such powers as the board may by resolution prescribe. The duties of the president and other officers at meetings of the board and stockholders shall be prescribed by the by-laws. The board of directors shall have power to appoint an executive committee, and to confer upon and to dele
gate to said committee the full power of the board
107 of directors when the latter is not in session;
and the board may appoint a secretary, treasurer, comptroller and such other officers and agents as it may deem necessary, and it may remove them at pleasure, prescribe their duties and compensation, and demand adequate security for the discharge of their respective duties.

Section 10. Section 11 of said Chapter 326 is hereby amended so as to read as follows: Section 11. The capital stock of said company may be increased from time to time to such an amount as may by its stockholders be deemed necessary for the construction, acquisition or operation of any of its railroad or railroads, by a vote of the owners of record of at least a majority of all its outstanding stock, in person or by proxy, at any annual meeting, or at any meeting called for that purpose, by a notice in writing to each stockholder, to be served upon him personally, or by depositing the same in the postoffice, postage paid, properly directed to him at the post-office nearest his usual place of residence, at least twenty days prior to such meeting, such notice shall state the time and place of such meeting, its object, and the amount to which it is proposed to increase such capital stock. No vote in favor of such increase shall take effect until the proceedings of such meeting, showing the names of the stockholders voting therefor, and the amount of stock owned by each, shall be entered upon

the records of said corporation, and the said company may at any time, by a vote of the holders of record of two-
108 thirds of said outstanding stock, classify its said stock into common and preferred; and it may further classify its said stock by dividing its preferred into different classes, and it may make any or all of said classes of preferred stock cumulative or non-cumulative as to dividends thereon, and any or all of said preferred stocks may be with or without preference over any other stock or classes of stock in the event of the liquidation of the company's affairs, either through insolvency or otherwise. And the said company may make such preferred stock convertible into common stock upon such terms and conditions as may be fixed by the board of directors.

Section 11. Section 12 of said Chapter 326 is hereby amended so as to read as follows: Section 12. The said company is hereby expressly authorized to borrow from time to time such sums of money, and upon such terms, as the corporation or board of directors shall agree upon or authorize as necessary and expedient; and in its corporate name to execute and deliver its notes, bonds, debentures or other evidences of indebtedness, in such forms as shall be from time to time prescribed by the board of directors, and in such amount as shall be deemed from time to time by said board, expedient; and may make the same convertible into its capital stock of any class upon such terms and conditions as to the board of directors may seem advisable, and it may pledge or hypothecate such notes, bonds, debentures or other evidences of indebtedness
109 as collateral security for loans made to it by any person or persons, corporation, association or body politic; and it may sell such notes, bonds, debentures or other evidences of indebtedness at such prices and upon such terms as the board of directors shall prescribe; and it may deliver the same in discharge of any liabilities which it may have incurred or proposes to incur, in the construction, purchase or other acquisition of any railroad or railroads or other property which it is or may hereafter be by law authorized to construct, purchase or acquire, and in the repair, equipment or operation of its railroad or railroads, main line or branch, or of any part or parts thereof, or of any steamships, steamboats, barges, ferries or other water craft acquired or owned by it, or which it desires to acquire by construction or purchase; and it may exchange the same for the stocks, bonds or other evidences of indebtedness of any railroad company whose railroad or railroads it is or may hereafter be authorized to purchase and it may generally use the same in such manner as shall in the judgment of the board of directors subserve and promote the cor-

porate purposes; and the powers of said company for the purposes aforesaid, and for all purposes necessary for the carrying out of the objects, or any thereof, of said company are hereby ratified and confirmed; and the said company may, and it is hereby expressly authorized and empowered, in order to secure the payment of any such notes, bonds, debentures or other evidences of indebtedness, execute and deliver
110 from time to time collateral trust, indentures, or other security agreements or indentures, and it may from time to time execute and deliver trust deeds, or mortgages or both, as occasion may require of and upon any of its railroad or railroads, or parts thereof, constructed or thereafter to be constructed or in process of construction and may by any such mortgage or trust deed convey and mortgage all or any of its railroad track or tracks, rights of way, depot grounds, rights, privileges, franchises, immunities, exemptions, machine houses, rolling stock, furniture, tools bridges, elevators steamboats, steamships, and all appendages and appurtenances and all other property, real, personal and mixed, in any manner whatever then belonging to the corporation or which it may thereafter acquire; and it may include in any such mortgage or trust deed any grant or grants of land, or any parts thereof, owned or held by it, or in which it may be or may become interested; and it may also grant, convey and transfer by any such mortgage or deed of trust its franchise to be a corporation and in its franchise to have, possess, maintain and operate the railroad or railroads and other property and operate the railroad or railroads and other property described in any such instrument uncovered thereby; and it may also give and grant to individual bond holders the right and power to vote at meetings of stockholders upon all such questions other than election of directors as may come before such meetings; and every such mortgage, deed of trust, collateral trust,
111 indenture or security agreement to be executed by said company shall be in such form, and contain such provisions, as the corporation or board of directors shall think proper. And in any such mortgage, deed of trust, collateral trust indenture or security agreement there may be inserted provisions limiting the right of individual holders of the bonds, notes or evidences of indebtedness secured thereby to sue or recover upon any such bonds, notes or other evidences of indebtedness, or upon any coupon annexed thereto secured by said instrument either at law or in equity, except through the trustee or trustees to whom or to which or with whom or with which such instrument is made, and every such provision shall be binding upon the holders of said bonds, notes or other evidences of indebtedness, and all thereof, and upon any court

whose jurisdiction and aid may be invoked in foreclosing the lien or liens created thereby. And every such mortgage or mortgages, deed or deeds of trust or collateral trust indenture and every discharge or satisfaction thereof, may be recorded in the office of the secretary of state in a proper book kept for that purpose, and the certificate of such recording endorsed on such instrument, shall have the same effect as if such instrument were recorded in the several counties in which such railroad or railroads may be located and such record in the office of the secretary of state shall be sufficient notice to all persons of the existence and lien created by said instrument, and of the property covered by the same.

112 Section 12. The said company may lease or purchase, and take a conveyance or assignment of the railroad or railroads franchises, immunities, and all other properties and appurtenances and the stocks or bonds, or both thereof, of any other railroad corporation, or any portion thereof within or without this state, when their respective railroads can be lawfully connected and operated together to constitute a continuous line, or when the railroad or railroads so leased or purchased will constitute branches or feeders of any railroad or railroads maintained and operated by such leasing or purchasing company; and the said company may purchase and hold the stock and bonds, or either thereof, of any railway company to which it has furnished the money for the construction of its railway, or may purchase for the money so furnished, or for such other consideration as may be agreed upon between the companies by their respective boards of directors, and take a conveyance of the whole or any portion of the franchises of said corporation, and of the railway property and appurtenances.

Section 13. And the said company may and it is hereby expressly authorized and empowered to, purchase or otherwise acquire and hold the stock or bonds or both thereof of any corporation (wherever organized) the franchises, functions or operations of which may or would in any wise be utilized for the convenient or more economical or safe operation of its railroad or railroads, or of any thereof; and the said com-

113 pany may guarantee the principal or interest or both thereof, of the bonds, or may endorse the same, or may guarantee the dividends upon the stock or the rentals or obligations of any lease or traffic contract of any corporation which it may control by virtue of the ownership of its stock or otherwise, and may endorse the notes of any such company, or other evidences of indebtedness of any such company, and may guarantee by endorsement or otherwise, the bonds or other

evidences of indebtedness, and the dividends upon the stock, or the rentals or obligations of any lease or traffic contract, of any corporation or corporations whose property the said company may now or hereafter be authorized by law to acquire by purchase or lease of the physical property thereof, or by purchase of the stock thereof.

Section 14. The said company shall, in addition to the special powers conferred upon it by said Chapter 326 and by this act, have, possess and enjoy all of the rights, powers, privileges and immunities conferred upon railroad corporations by Chapter 87 of the revised statutes of 1878, and the acts amendatory thereof and supplementary thereto, and shall be subject, save where inconsistent herewith, to the restrictions, duties and liabilities imposed upon railroad corporations by said chapter and all amendatory and supplementary acts.

Section 15. Sections 13, 14, 15, 16, 17, 18 and 19, of said Chapter 326 are hereby repealed.

114 Section 16. All acts and parts of acts inconsistent with or in any manner contravening the provisions of this act are hereby repealed.

Section 17. This act shall take effect and be in force from and after its passage and publication.

T. D. WEEKS,
President of the Senate.

GEO. W. BURROWS,
Speaker of the Assembly.

Approved April 15, 1895. W. H. Upham, Governor.

At a meeting of the stockholders of the Superior and St. Croix Railroad Company, held at the office of John C. Spooner, in the City of Madison, State of Wisconsin, on the 8th day of October, 1895, at ten o'clock A. M., pursuant to adjournment, all of the stockholders being present in person and by proxy, the following resolutions were duly and unanimously adopted, by a stock vote, to-wit:

Resolved, that the action of Hiram Hayes, secretary, in applying for and procuring the amendment to the charter of the company made by Chapter 244 of the laws of 1895, entitled "An act to amend Chapter 326 of the private and local laws of 1870, entitled "An act to incorporate the Superior and St. Croix Railroad Company," and Chapter 328 of the
115 private and local laws of 1871, entitled "An act to amend Section 2, Chapter 326, of the private and local

laws of 1870, approved March 15th, 1870, entitled "An act to incorporate the Superior and St. Croix Railroad Company," be, and the same is hereby ratified and approved.

Resolved, that the president and secretary of the company be, and they are hereby, authorized and instructed to execute on behalf of the company, and under its corporate seal, and to file with the secretary of state, a certified copy of the foregoing resolution accepting said chapter 244 and the amendments to the charter therein and thereby made.

State, County and City of New York—ss.

We, Edward D. Adams, president, and George H. Gardiner, Secretary of the Superior and St. Croix Railroad Company, a corporation organized and existing under the laws of the State of Wisconsin, do hereby jointly and severally certify that we have compared the foregoing with the originals thereof as they appear upon the records of the company, and that the same are true and correct copies of said originals, and of the whole thereof, and that the same were adopted at a meeting of the stockholders of said company duly held as in the caption hereof stated and set forth.

In Witness Whereof, we have hereunto, pursuant to the instructions of the stockholders, as aforesaid, set our hands, and caused the common corporate seal of the company to be hereto affixed.

[Seal]

EDWARD D. ADAMS,
President.

GEORGE H. GARDINER,
Secretary.

116 State of Wisconsin,
Department of State—ss.

Received this 10th day of July, A. D. 1896, and recorded in Vol. 8 of R. R. Inc. & Res. on page 625.

G. E. VANDERCOOK,
Assistant Secretary of State.

At a meeting of the stockholders of the Superior and St. Croix Railroad Company, duly held at the office of Spooner, Sanborn, Kerr & Spooner, in the City of Madison, State of Wisconsin, on the 1st day of July, A. D. 1896, at two o'clock P. M., all of the holders of record of the capital stock of said company being duly represented at said meeting, the following, among other proceedings, were duly had, to-wit:

On motion of Mr. Spooner, seconded by Mr. Reed, the following resolution was, by a stock vote, unanimously adopted,

every share of the outstanding stock of said company voting therefor, to-wit:

Resolved, that the corporate name of this corporation be, and the same is hereby, changed from "The Superior and St. Croix Railroad Company" to "Northern Pacific Railway Company", which latter name is hereby adopted as the corporate name of this corporation.

State, County and City of New York—ss.

I, George H. Gardiner, Secretary of the Superior and
117 St. Croix Railroad Company, and the custodian of its books, records and common corporate seal, do hereby certify that I have compared the above and foregoing with the original resolution, and with the record of its adoption above set forth, and that the same is a true and correct copy of the said resolution, and of the whole thereof, and of the record of the adoption thereof at the meeting of the Stockholders of said Company duly held as in the caption hereof set forth.

In Witness Whereof, I have, pursuant to the order of the stockholders in this behalf, duly made, hereunto set my hands and affixed the said corporate seal this eighth day of July, A. D. 1896.

[Seal] GEORGE H. GARDINER,
Secretary, Superior and St.
Croix Railroad Company.

State of Wisconsin,
Department of State—ss.

Received this 10th day of July and recorded in Vol. 8 of R. R. Inc. & Res. on page 624.

G. E. VANDERCOOK,
Assistant Secretary of State.

United States of America,
The State of Wisconsin, Department of State.

To All to Whom these Presents shall Come,

I, W. L. Houser, Secretary of State of the State of
118 Wisconsin and Keeper of the Great Seal thereof, do hereby certify that the annexed copy of

An Act

To incorporate the Superior and St. Croix Railroad Company and Amendments thereto, including one changing name of the company to Northern Pacific Railway Company, have been compared by me with the enrolled acts and resolutions on file in this Department, and that the same is a true copy thereof, and of the whole of such acts and resolutions.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State at the Capitol, in the City of Madison, this 13th day of July, A. D. 1903.

[Seal]

W. L. HOUSER,
Secretary of State.

Filed in my office at o'clock M., Oct. 19, 1905.
J. P. Johnson, Clerk Dist. Court. By V. A. Dash, Deputy.

119 State of Minnesota,
County of Ramsey—ss.

I hereby certify and return, that at the City of St. Paul, County of Ramsey and State of Minnesota, aforesaid, on the 20th day of October A. D. 1905, I served the Summons hereto attached upon the within named John A. Humbird personally, by handing to and leaving with him, said John A. Humbird, a true and correct copy thereof, and further certify and return that on said date and place I serve the said Summons hereto attached upon the within named Frederick Weyerhaeuser by leaving a true and correct copy thereof at the house of his usual abode with Christ W. Zabee a person of suitable age and discretion then residing therein.

ANTON MIESEN,
Sheriff of Ramsey County, Minn.
By Hans Hanson, Deputy.

Sheriff's Fee Service	$1.50
Travel	.60
	$2.10

Dated this 20th day of October A. D. 1905.

State of Minnesota,
County of St. Louis.

District Court, Eleventh Judical District.

Herbert H. Hoyt,
vs.
John A. Humbird and Federick Weyerhaeuser.

The State of Minnesota, To the above named Defendant.

You are hereby summoned and required to answer the complaint of the Plaintiff in the above entitled action, which is filed in the office of the Clerk of the District Court of
120 the 11th Judical District in and for the County of St. Louis and State of Minnesota and to serve a copy of your answer to the said Complaint on the subscriber, at his

office in Duluth in said County, within 20 days after the service of this summons upon you exclusive of the day of such service; and if you fail to answer this said complaint within the time aforesaid, the Plaintiff in this action will apply to the court for the relief demanded in the complaint.

Dated Duluth, Minn., October 19th 1905. H. H. HOYT,
Plaintiff's Attorney,
310 Manhattan Building, Duluth, Minn.

Received Oct. 20, 1905. Anton Miesen, Sheriff.
By Mason, Deputy.

Filed in my office at o'clock m Oct. 26, 1905. J. P. Johnson, Dist. Court, By V. A. Dash, Deputy.

State of Minnesota,
County of St. Louis.

District Court.

Herbert H. Hoyt, Plaintiff,
vs.
John A. Humbird, Frederick Weyerhaeuser, Defendants.

Now come the above named John A. Humbird and Frederick Weyerhaeuser and by their petition respectfully show to the Court:

121 This action was begun by service of the summons and complaint upon the petitioners on October 20, 1905, and is a civil action now pending in this Court.

The petitioners have not yet served or filed their answer in the cause and the time for answering under the laws of Minnesota will not expire until November 9, 1905.

The matter in dispute in this action exceeds the sum of two thousand dollars exclusive of interest and costs, the value of the property in dispute being at least twenty-one hundred dollars.

As appears upon the face of the complaint, this suit involves a federal question. All the plaintiff's rights depend (a) upon the construction of the act of congress of July 2, 1864, granting land to aid in the construction of a railroad from Lake Superior to Puget Sound and the amendments of that act, among others the joint resolution of congress of May 31, 1870, pertaining to the indemnity under said grant, and (b) upon the interpretation and effect to be given to the act of congress of July 1, 1898, also relating to the said land. As appears from the face of the complaint, the decision of the case must turn upon the effect and interpretation of the said acts of congress.

The defendants herewith offer and file a bond as provided by the laws of the United States upon the removal of causes from the State Court to the United States Court, which bond is hereto attached and submitted to the Court.

Wherefore your petitioner pray this honorable court to accept the said bond and that said cause be removed into the circuit court of the United States for the District of Minnesota, and that this court proceed no farther in the premises.

122 Dated November, 4, 1905.

JOHN A. HUMBIRD,
FREDERICK WEYERHAEUSER,
By C. W. Bunn, Defendants' Attorney.

Post Office Address, Northern Pacific General Office Building, corner Fourth & Broadway Streets, St. Paul, Minnesota.

State of Minnesota,
Ramsey County—ss.

Fred E. Weyerhaeuser being duly sworn deposes and says that he is agent of the petitioners named in the foregoing petition and knows the contents thereof and is authorized by the petitioners to make this petition and affidavit; that the petition is true to his own knowledge, except as to matters therein stated on information and belief, and as to such matters he believes it [it] to be true, that as to the value of said property his belief is based upon careful estimates and examinations of the land itself by agents of the defendants, and he verifies this petition because both the petitioners are absent from the state of Minnesota where deponent resides.

FRED E. WEYERHAEUSER.

Subscribed and sworn to before me the 6th day of November, 1905.

W. T. FRANCIS.
Notary Public, Ramsey County, Minnesota.
My Commission expires April 5th, 1911.
[Notarial Seal]

State of Minnesota,
County of St. Louis.

District Court.

123 Herbert H. Hoyt, Plaintiff,
vs.
John A. Humbird, Frederick Weyerhaeuser, Defendants.

Know All Men By These Presents that we, John A. Humbird, and Frederick Weyerhaeuser, of Saint Paul, Minnesota, as

principals, and A. R. Macartney of St. Paul as surety, are held and firmly bound unto Herbert H. Hoyt, the plaintiff in the above entitled suit, in the penal sum of five hundred dollars lawful money of the United States, for the payment of which well and truly to be made the said principals bind themselves, their heirs, executors, administrators and assigns, and the said surety binds himself, his heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated on the Sixth day of November, A. D. 1905.

The condition of the above obligation is such that if said John A. Humbird and Frederick Weyerhaeuser, the defendants in an action now pending in the District Court of St. Louis County, Minnesota, shall enter in the Circuit Court of the United States, for the District of Minnesota, on the first day of next session thereof, a copy of the records in said suit, and shall pay all costs that may be awarded by the said Circuit Court, if said Court shall hold that such suit was wrongfully or improperly removed thereto, and shall also then appear and enter special bail in said suit, if special bail was originally requisite therein, and shall enter appearance of said
124 defendants in said Court, then this obligation to be void, otherwise to remain in full force and effect.

In witness whereof the said obligors have hereunto set their names and seals this 6th day of November A. D. 1905.

JOHN A. HUMBIRD, [Seal]
By C. W. Bunn, his Atty.

FREDERICK WEYERHAEUSER [Seal]
By C. W. Bunn, his Atty.

A. E. MACARTNEY [Seal]

State of Minnesota,
Ramsey County—ss.

A. E. Macartney came before me personally and being by me first duly sworn deposes and says that he is the person named as surety in the foregoing bond; that he is a resident and free holder of and within the State of Minnesota and worth the amount of Five Hundred Dollars specified in the foregoing bond above his debts and liabilities and exclusive of his property which is exempt from execution.

A. E. MACARTNEY.

Subscribed and sworn to before me the 6th day of November 1905.

W. T. FRANCIS,
Notary Public, Ramsey County, Minnesota.
My commission expires April 5th, 1911.
[Notarial Seal]

Filed in my office at o'clock m Nov. 7, 1905. J. P. Johnson, Clk. Dist. Court. By V. A. Dash, Deputy.

State of Minnesota,
County of St. Louis.
District Court.

Herbert H. Hoyt, Plaintiff,
vs.
John A. Humbird, Frederick Weyerhaeuser, Defendants.

Upon the filing and presentation to the Court of the
125 petition of John A. Humbird and Frederick Weyerhaeuser to remove this suit to the Circuit Court of the United States, District of Minnesota, together with their bond in accordance with law,

It is hereby ordered that the said petition and bond be accepted and that this Court proceed no further with the cause. Dated November 7, 1905.

HOMER B. DIBELL, Judge.

Filed in my office at o'clock m Nov. 7, 1905. J. P. Johnson, Clk. Dist. Court. By V. A. Dash, Deputy.

Clerk's Certificate.

State of Minnesota,
County of St. Louis—ss.

District Court, Eleventh Judicial District.

I, J. P. Johnson, Clerk of the District Court, St. Louis County, and State of Minnesota, do hereby certify that I have compared the foregoing papers writing with the original Complaint, Summons and return; Petition and Bond on Removal to United States Circuit Court; and Order on Removal to United States Circuit Court in the action therein entitled, now remaining of record in my office, and that the same is a true and
126 correct copy and transcript of said original papers and the whole thereof.

Witness my hand and seal of said court, at Duluth, the 7th day of November A. D., 1905.

J. P. JOHNSON, Clerk.
By H. C. Wedmark, Deputy Clerk.

Endorsed: Transcript from St. Louis County State Court. Filed Nov. 8th, 1905. Henry D. Lang, Clerk, by E. Catherine Neff, Deputy Clerk.

127 That on the 9th day of November, A. D. 1905, the appearance by H. Oldenburg, Esq., as solicitor for defendants, was filed and entered.

That further on the same day, to-wit: on the 9th day of November, A. D. 1905, there was filed with said Clerk a stipulation extending the time in which defendants may answer; and that on the same day there was entered in the Term Minutes of said Court an Order of Court permitting such extension; which said stipulation and order are, in words and figures, as follows, to-wit:

Herbert H. Hoyt,

No. 497. vs. In Equity.

John A. Humbird and Frederick Weyerhaeuser.

It is hereby stipulated by and between the parties hereto, by their respective attorneys, that the time to plead, answer or demur to the complaint in the above entitled cause be and is hereby extended to and including the first Monday in January, 1906.

H. H. HOYT,
Counsel for Plaintiff.

C. W. BUNN and
JAMES B. KERR,
Counsel for defendants.

Pursuant to the foregoing stipulation filed this day herein, it is now, by the Court

Ordered: That the time in which the defendants may plead, answer or demur to the complaint herein be, and the same hereby is extended to and including the first Monday in January A. D. 1906.

That on the 5th day of December, A. D. 1905, there
128 was filed with said Clerk the Answer of the defendants in said cause; in the words and figures following, to-wit:

Circuit Court of the United States, for the District of Minnesota, Fifth Division.

Herbert H. Hoyt, Complainant,

vs.

John A. Humbird and Frederick Weyerhaeuser, Defendants.

Answer.

Come now the defendants John A. Humbird and Frederick Weyerhaeuser and answer the complaint herein as follows:

I.

Defendants admit that the land described in the bill of complaint was and is chiefly valuable for the timber
129 standing thereon and has no valuable deposit of gold, silver, cinnabar, copper or coal, and was at the times mentioned in the bill of complaint and now is uninhabited, in

a state of nature and unimproved, but defendants say that the land is susceptible of and fit for cultivation when cleared of the timber thereon.

II.

Defendants admit that on or about December 17, 1898, one Richard B. Jones applied to the United States District Land Office at Duluth to purchase the land in question under the provisions of the act of congress of June 3, 1878, and that notice of such application was posted and published as required by law, and that Exhibit "A" attached to the bill of complaint is a copy of the evidence presented to said district land officers. Defendants admit that said Jones paid to the receiver of said district land office the sum of one hundred dollars and received a receipt therefor in the form set out in the bill of complaint.

Defendants allege that at the time of the application by Richard B. Jones and at the time of the issuance of said receipt the land in question was not subject to entry or purchase under the act of congress of June 3, 1878, but was reserved and appropriated by the selection thereof by the Northern Pacific Railroad Company, as hereinafter more fully set forth, and the register and receiver of said district land office had no jurisdiction or authority to receive said application or to issue said receipt.

Defendants have no knowledge or information sufficient to form a belief as to whether said Jones attempted to convey said land to Minnie Stewart or whether said Minnie Stewart attempted to convey it to complainant, but defendants allege that neither Jones, Stewart nor complainant ever acquired
130 any title to or interest in the land whatsoever.

Defendants admit that on December 2, 1901, the Commissioner of the General Land Office rendered the decision, bearing that date, cancelling said entry of Richard B. Jones, set out in the bill of complaint, but the defendants deny that said decision and order cancelling said entry was rendered without notice to Jones and those claiming under him, or without any hearing or evidence, and the defendants allege that Jones and those claiming under him received due and sufficient notice and that the action of the Commissioner of the General Land Office was had after such notice and a full hearing and upon a due consideration of all the facts bearing upon the validity of said entry. Defendants deny that the order of the Commissioner of the General Land Office cancelling said entry was made without jurisdiction or was void, and defendants allege that said order was properly made and

was required by reason of the erroneous allowance of said entry by the district land officers.

Defendants admit that an appeal was duly taken from said decision of December 2, 1901, to the Secretary of the Interior, and that said decision was affirmed on August 30, 1905, by the Secretary, and that Exhibit "B" attached to the bill of complaint is a true copy of such decision of affirmance.

Defendants admit that a patent for the land in question was thereafter issued by the United States, and defendants allege that said patent was duly executed on the 18th day of October, 1905.

Defendants admit that at the time of the issuance of said patent the Northern Pacific Railway Company had knowledge of the pretended entry of Richard B. Jones, but defendants deny that said Railway Company had any knowledge or notice of plaintiff's claim thereunder.

131 III.

Defendants admit that the land in question is situated outside the limits of the grant by act of congress approved July 2, 1864, but within the extended indemnity limits of said grant created by the joint resolution of congress approved May 31, 1870. Defendants deny that the selection of the land in question as indemnity was illegal.

Defendants Admit that the land in question was selected with other land in lieu of the north half of the southeast quarter of section eleven of township forty-six north, of range sixteen west, in the State of Minnesota, and admit that the land last described was within the over-lapping limits of the grant to the State of Minnesota by act of congress of May 5, 1864, to aid in the construction of a railroad from St. Paul to Lake Superior, of which the Lake Superior & Mississippi Railroad Company became the beneficiary. Defendants admit that the land so specified as a basis for the selection of the land in controversy was approved to the Lake Superior & Mississippi Railroad Company as indemnity under said grant of May 5, 1864, on April 25, 1868, and was outside the withdrawal of May 26, 1864, for the benefit of the Lake Superior & Mississippi Railroad Company. Defendants deny that said land so specified as a basis for the selection of the land in controversy was outside the limits of the grant of May 5, 1864, and deny that it was within the limits of the extension of said grant by act of congress approved July 13, 1866, and allege that it was within the ten-twenty mile or indemnity limits created by the act of May 5, 1864, as defined by the definite

location of the railroad of the Lake Superior & Mississippi Railroad Company.

IV.

Defendants deny that any line of the Northern Pacific railroad was ever located or constructed under the act of congress of July 2, 1864, between Thompson Junction and
132 Duluth, and no lands were ever claimed by the Northern Pacific Railroad Company under any grant by the United States by virtue of said line of road between Thomson Junction and Duluth, and defendants allege that the Northern Pacific Railroad Company merely acquired from the Lake Superior & Mississippi Railroad Company a half interest in said line under authority granted by and for the purpose of complying with certain requirements imposed by the State of Minnesota.

V.

Defendants deny that any requirements of law or of the Interior Department in the selection of the lands in question were omitted by the Northern Pacific Railroad Company or by the Northern Pacific Railway Company.

VI.

Defendants deny that the Northern Pacific Railroad Company, before the issuance of the patent for the land in question, had received more land under its said grant than it was entitled to receive upon the side of the road in which said land was situated, or at all.

VII.

Defendants admit that on November 13, 1895, the Secretary of the Interior rendered a decision declaring that the eastern terminus of the Northern Pacific railroad, under the act of congress of July 2, 1864, was not farther east than Superior, and on August 27, 1896, the Secretary of the Interior rendered another decision wherein he held that the eastern terminus of said grant, under the act of July 2, 1864, was at Duluth, and on December 24, 1896, the land department prepared a diagram showing the eastern terminus of said grant
133 as so defined by the Secretary's decision of August 26, 1896, and a copy thereof was transmitted to the Duluth Land Office on January 22, 1897.

Defendants admit that on July 17, 1897, the Commissioner of the General Land Office addressed a communication bearing that date to the register and receiver of the Duluth land office, of which a copy is set out in the bill of complaint. Defendants admit that the notice required by said communication was

given as directed. Defendants allege that said decisions of the Secretary of the Interior of November 13, 1895, and August 27, 1895, and the directions contained in the communication of July 17, 1897, were erroneous and were rendered and given under a mistake of law as to the true eastern terminus of said land grant, which was and is in fact at Ashland in the State of Wisconsin, and neither by virtue of said mistaken directions of the Commissioner of the Land Office, nor otherwise, was any action required by the Northern Pacific Railroad Company to protect or enforce its rights to the land in question.

Defendants deny that the aforesaid action of the Interior Department restored the land in question to the public domain, and these defendants allege that at all the times mentioned in the bill of complaint the land was appropriated for the benefit of the Northern Pacific Railroad Company by virtue of its selection thereof as indemnity.

Defendants admit that on July 12, 1900, under the direction of the Secretary of the Interior the Commissioner of the General Land Office rescinded the previous action of the land department and declared the selection of the lands in question reinstated.

Defendants admit that on February 28, 1898, an order
134 was made by the land department of which an extract is correctly copied in the bill of complaint.

Defendants admit that instructions were issued to the Duluth land office on April 4, 1898, as set forth in the bill of complaint.

VIII.

Defendants admit that instructions were issued by the Interior Department on February 14, 1899, regarding the adjustment of the Northern Pacific land grant under the provisions of the act of congress of July 1, 1898, as set forth in the bill of complaint, but except where the said bill of complaint purports to copy verbatim the provisions of said instructions defendants beg leave to refer to the published instructions for the text thereof.

Defendants admit that the Interior Department found and held by its published regulations dated November 21, 1899, that the Northern Pacific Railway Company was the lawful successor in interest of the Northern Pacific Railroad Company as to all lands within the grant to the last named company, and these defendants allege that said said finding by the Interior Department as to such successorship was based upon the good

and sufficient evidence and is final and conclusive. Defendants deny that the Northern Pacific Railway Company is not such successor and allege that it is in fact such successor.

IX.

Defendants admit that their claim of title to the land in question is derived from the Northern Pacific Railway Company. Defendants deny that the patent for said land issued by the United States to the Northern Pacific Railway Company was issued under a mistake of law or without authority. Defendants admit that the lands in question and the right to receive a patent therefor from the United States passed

135 from the Northern Pacific Railroad Company by a sale held in pursuance of a decree of the Circuit Court of the United States for the Eastern District of Wisconsin rendered upon the supplemental bill of The Farmers' Loan and Trust Company in a certain consolidated cause entitled The Farmers' Loan and Trust Company versus Northern Pacific Railroad Company and others, defendants, and in pursuance of a similar ancillary decree entered in the Circuit Court of the United States for the District of Minnesota in an ancillary proceeding prosecuted therein under the same title, and that the portion of the decree or order of June 5, 1899, set out in the bill of complaint is correctly stated.

Defendants deny that the Court was without authority to make the order of sale under which the Northern Pacific Railway Company purchased said land, but defendants allege that the Circuit Court of the United States for the Eastern District of Wisconsin and the Circuit Court of the United States for the District of Minnesota had jurisdiction of all the parties and of the subject matter in said cause and full power and authority to make and enter said order and decree of sale.

Defendants admit that in pursuance of said decree Alfred L. Cary, Special Master named therein, executed the same and reported to the Court that he had sold to the Northern Pacific Railway Company the lands, rights and titles as alleged in the bill of complaint.

Defendants admit that on September 22, 1899, the said Alfred L. Cary, as Secial Master by deed dated that day, conveyed to the Northern Pacific Railway Company the property so sold as aforesaid, including the land in question, and that said deed contains a recital quoted in the bill of complaint.

136 Defendants deny that at the time of the sale to the Northern Pacific Railway Company, the Northern

Pacific Railroad Company had no interest upon which such sale could attach.

X.

Defendants deny that the Northern Pacific Railway Company had no power or authority to purchase the land in question and the right thereto, and they deny that the patent of the United States therefor was issued without authority or under a mistake of law or fact.

Defendants deny that the Northern Pacific Railway Company is the successor of the "Superior and St. Croix Railroad Company" and defendants allege that the name "Superior and St. Croix Railroad Company" has merely been changed to "Northern Pacific Railway Company."

Defendants deny that the legislature of Wisconsin did not grant to the Northern Pacific Railway Company any authority to hold or possess lands other than such as might be required for the operation of its railroad. Defendants admit that Exhibit "D" attached to the bill of complaint contains true copies of the act to incorporate the Superior and St. Croix Railroad Company, and of certain acts amendatory thereof and supplemental thereto, and of the record of certain proceedings taken to change the name of the Superior and St. Croix Railroad Company to Northern Pacific Railway Company.

XI.

Further answering, defendants allege that they are the owners of the land described in the bill of complaint herein. Defendants allege that said land is situated more then thirty and less than forty miles distant from the line of the Northern Pacific Railroad as said line was definitely located under the acts of congress approved July 2, 1864, and the acts amendatory thereof granting lands to the Northern Pacific
137 Railroad Company to aid in the construction of a line of railroad from Lake Superior to Puget Sound and within the idemnity limits provided by the joint resolution of congress approved May 31, 1870, amendatory of the act of July 2, 1864; that said land was duly selected under the terms of said joint resolution by the Northern Pacific Railroad Company, and in pursuance of such selection was thereafter patented by the United States to the Northern Pacific Railway Company, which last named company was then the successor in interest of the Northern Pacific Railroad Company, on October 18, 1905; that on January 19, 1900, the said Northern Pacific Railway Company executed and delivered to defendants its deed of conveyance, purporting to convey said land, which deed contained full covenants on behalf of said Railway Com-

pany that it was seized of said land and had good right and lawful authority to convey the same, and these defendants say that they have elected to take and receive, by virtue of said covenants, and have thereby become vested with the full title to said land under and through the Northern Pacific Railway Company.

Defendants deny every matter and thing in said bill of complaint contained not hereinbefore expressly admitted.

Wherefore, defendants pray that the bill of complaint herein be dismissed with costs in favor of these defendants.

JOHN A. HUMBIRD and
FREDERICK WEYERHAEUSER,
By C. W. Bunn and James B. Kerr,
Their Solicitors.

138 United States of America,
District of Minnesota,
County of Ramsey—ss.

John A. Humbird, being first duly sworn on oath says: That he is one of the defendants above named and makes this affidavit on behalf of his co-defendant and himself; that he has read the foregoing answer and knows the contents thereof and that the same is true.

JOHN A. HUMBIRD.

Subscribed and sworn to before me this 4th day of December, A. D. 1905.

[Notarial Seal] A. E. McCARTNEY,
Notary Public, Ramsey County, Minnesota.
My Commission expires May 25, 1907.

Endorsed: Answer. Filed Dec. 5, 1905. Henry D. Lang, Clerk. By Thos. H. Pressnell, Deputy Clerk.

That on the 8th day of December, A. D. 1905, there was filed with said Clerk separate Replications to the Answer of the defendants in said cause; in the words and figures following, to-wit:

United States Circuit Court, District of Minnesota,
Fifth Division.

Herbert H. Hoyt, Complainant,
vs.
John A. Humbird and Frederick Weyerhaeuser,
Defendants.

139 This replicant, saving and reserving to himself, now and at all times hereafter, all, and all manner of ad-

vantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of said defendant Frederick Weyerhaeuser for replication thereunto, says that he will aver, maintain and prove his bill of complaint to be true, certain and sufficient in the law to be answered unto; and that the answer of the said defendant is uncertain, untrue and insufficient, to be replied unto by this replicant without this, that any other matter or thing whatsoever in answer contained, material or effective in law to be replied unto, confessed and avoided, traversed, or denied, is true; all which matters and things this replicant is and will be ready to aver, maintain and prove as this honorable court shall direct, and humbly prays as in and by his bill he has always prayed.

H. H. HOYT,
Counsel & Solicitor for Complainant.

To: C. W. Bunn and James B. KERR,
Counsel & Solicitors for Defendant.

Endorsed: Reply to Answer of Defendant, Weyerhaeuser. Filed Dec. 8, 1905. Henry D. Lang, Clerk, by Thos. H. Pressnell, Deputy Clerk.

United States Circuit Court, District of Minnesota, Fifth Division.

Herbert H. Hoyt, Complainant,
vs.
140 John A. Humbird and Frederick Weyerhaeuser, Defendants.

This replicant, saying and reserving to himself, now and at all times hereafter, all, and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant John A. Humbird, for replication thereunto says that he will aver, maintain and prove his bill of complaint to be true, certain and sufficient in the law to be answered unto; and that the answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this replicant without this, that any other matter or thing whatsoever in answer contained, material or effective in law to be replied unto, confessed, and avoided, traversed, or denied, is true; all which matters and things this replicant is and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he has always prayed.

H. H. HOYT,
Counsel & Solicitor for Complainant.

To: C. W. Bunn, and James B. Kerr,
Counsel & Solicitors for Defendants.

Endorsed: Reply to Answer of Defendant Humbird. Filed Dec. 8, 1906. Henry D. Lang, Clerk, by Thos. H. Pressnell, Deputy Clerk.

141 That on the 24th day of December, A. D. 1906, there was filed with said Clerk, a notice of trial and note of issue in said cause; and that in compliance with the request in said note of issue contained said clerk duly placed said cause on the trial calendar for the January, A. D. 1907, term of said Court, for final hearing.

That on the 13th day of February, A. D. 1907, said cause was, by order of the Court, consolidated with the cause entitled Charles D. Campbell vs. Frederick Weyerhaeuser and John A. Humbird for the purpose of final hearing, in the words and figures following, to-wit:

Herbert H. Hoyt,
No. 497. vs. In Equity.
Frederick Weyerhaeuser and John A. Humbird,

and

Charles D. Campbell,
No. 507. vs. In Equity.
Frederick Weyerhaeuser and John A. Humbird.

Upon the motion of H. H. Hoyt, Esq., solicitor for complainant, solicitor for defendants consenting thereto, it is by the Court

Ordered: That said causes be, and they hereby are consolidated for the purposes of the final hearing thereof, and that they be tried as one and the same cause.

And it is by the Court further

Ordered: That the final hearing of said consolidated cause be, and the same hereby is set for Monday, March 4th, A. D. 1907 at ten o'clock A. M.

142 That said consolidated causes came on for final hearing on the 4th day of March A. D. 1907, and said hearing was concluded on the following day, to-wit: on the 5th day of March, A. D. 1907, and proceedings were had therein, as recorded in the Term Minutes of said Court, as follows, to-wit:

Herbert H. Hoyt,
No. 497. vs. In Equity.
Frederick Weyerhaeuser and John A. Humbird,

and

Charles D. Campbell,
No. 507. vs. In Equity.
Frederick Weyerhaeser and John A. Humbird.

The above entitled causes having heretofore been consolidated for the purpose of final hearing, coming on for hearing at this time, H. H. Hoyt, Esq., appears on his own behalf in the case of Herbert H. Hoyt vs. Frederick Weyerhaeuser, et al and as solicitor for complainant in the case of Charles D. Campbell vs. Frederick Weyerhaeuser, et al, and Messrs. C. W. Bunn and M. T. Saunders appear as solicitors for the defendants in both of said causes; Mr. Hoyt opens and argues the first cause on his own behalf and Mr. C. W. Bunn opens and concludes his argument therein on behalf of the defendants.

And said arguments not being concluded at the hour of adjournment it is by the Court

Ordered: That further proceedings herein be and the same hereby are postponed and continued until tomorrow morning at ten o'clock.

143

March 5, 1907.

This day come again the parties to said consolidated cause, by their respective solicitors, and further proceedings are had therein as follows, to-wit:

H. H. Hoyt, Esq., solicitor on his own behalf closes his argument in said first cause.

C. W. Bunn, Esq., closes on behalf of the defendants.

H. H. Hoyt, Esq., opens and concludes his argument on behalf of complainant in said second cause.

C. W. Bunn, Esq., opens and concludes his argument on behalf of the defendants.

And the Court having heard the evidence and the arguments and statements of the respective counsel of all the parties to said causes, being fully informed in the premises takes the same under advisement.

That the evidence submitted in said cause No. 476, at the final hearing hereof is as follows, to-wit:

United States Circuit Court, District of Minnesota, Fifth Division.

Herbert H. Hoyt, Complainant,
No. 497. vs.
John A. Humbird and Frederick Weyerhaeuser, Defendants.

Deposition taken before Thomas H. Pressnell, General Examiner in Chancery, by order of the Court, dated
144 April 21, 1906, together with the exhibits offered in connection therewith.

July 3, 1906.

Appearances.

For complainant, H. H. Hoyt, attorney at law.

Grafton Mason and M. T. Sanders, Attorneys for defendant

Documentary Evidence and Deposition of J. J. Durage.

Mr. Hoyt:
Complainant's Exhibit "E" offered in evidence, being an exemplified copy of the Joint Resolutions offered in the Senate of the United States, April 8, 1896, by Senator Mitchell.

Mr. Sanders:
Objected to as incompetent, irrelevant and immaterial.

Mr. Hoyt:
And this also includes report from Mitchell of April 21, 1896, and an amendment made May 16, 1896, and an amendment made May 25th, 1896, and another amendment made June 5th, 1896, and another proposed amendment by Senator Smith, June 6th, 1896.

Mr. Sanders:
Objected to as incompetent, irrelevant and immaterial, and not admissible under the pleadings.

Mr. Hoyt:
Complainant's Exhibit "F" offered in evidence, being an exemplified copy of report from the Committee of the Senate of the United States, dated April 21, 1896, by Senator
145 Mitchell, of Oregon, Committee on the Judiciary.

Mr. Sanders:
Objected to as incompetent, irrelevant and immaterial, and not admissible under the pleadings.

Mr. Hoyt:
Complainant's Exhibit "G" offered in evidence, being extract from the Journal of the Senate of the United States of the Fifty-Fourth Congress, First Session, dated April 8, 1896, pages 228 and 229.

Mr. Sanders:
Objected to as incompetent, irrelevant and immaterial.

Mr. Hoyt:

Complainant's Exhibit "H" offered in evidence, being diagram prepared to show the withdrawal on General Route for the Lake Superior and Mississippi Railroad by letter of May 26th, 1864, on map filed May 7th, 1864, attached to which is a Certificate as follows:

"Department of the Interior, General Land Office, Washington, D. C., May 29th, 1901.

"I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of the diagram, prepared by this office, to show the limits of the withdrawal made May 26th, 1864, on the map of the General Route, filed May 7th, 1864, by the Lake Superior and Mississippi Railroad Company, is a true and literal exemplification of the original now on file in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

[Signed] BINGER HERMANN,
Commissioner of the General Land Office."

Mr. Sanders:

Objected to as incompetent, irrelevant and immaterial.

Mr. Hoyt:

Complainant's Exhibit "I" offered in evidence, being
146 map the same as Exhibit "H", to which is attached the following certificate:

"Department of the Interior, General Land Office, Washington, D. C., June 14th, 1906.

"I hereby certify that the annexed copy of so much as is shown thereon of the official diagram, showing the limits of the grant to the Northern Pacific Railroad Company, is a true and literal exemplification of the original diagram on file in this office.

"In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the City of Washington, on the day and year above written.

[Signed] G. T. POLLOCK,
Acting Commissioner of the General Land Office."

Mr. Sanders:

Objected to as incompetent, irrelevant and immaterial.

J. J. Durrage, called as a witness on behalf of complainant, being first duly sworn, testifies as follows:

518

Direct Examination.

By Mr. Hoyt:

Q. Where do you reside? A. Duluth, Minnesota.

Q. How long have you resided here? A. Twenty Years.

Q. What is your occupation? A. Civil Engineer.

Q. Have you, in your business, been in the habit of drawing maps and diagrams, and land [plate], and so forth?

A. Yes, Sir.

Q. Did you draw this map, Exhibit "J"?

Mr. Sanders:

Objected to as incompetent, irrelevant and immaterial.

A. Yes, sir.

147 Mr. Hoyt:

Q. What does that map show?

Mr. Sanders: Objected to as incompetent, irrelevant and immaterial.

A. It is a compilation of maps issued by the land department of the United States—(Witness is shown Exhibit "J") "H" and "I"—It is a compilation of Exhibits "H" and "I".

Mr. Hoyt:

Q. Will you go on and explain this map as to the different lines in reference to it?

Mr. Sanders: Objected to as incompetent, irrelevant and immaterial. Also object to witness reading his testimony from a typewritten document.

Mr. Hoyt: That is simply a memorandum.

A. The line in dash and ring indicates the Lake Superior & Mississippi Railroad general route, withdrawal May 26, 1864.

Q. When you say dash and ring, explain in your testimony, so that they will understand in your testimony what it is?

A. Dash, ring; dash ring; dash ring; dash ring; dash ring. Full lines marked with tie shading, designate the lines as finally adopted by the Lake Superior & Mississippi Railroad and the Northern Pacific Railroad. Full heavy lines—

Q. What's the color of the full heavy—

A. Full heavy lines, pink lines, designate the general route of the Northern Pacific Railroad. Lines shaded in yellow, designate the place limits, and the outside limits of the General Route of the Lake Superior & Mississippi Railroad, filed May 7th, 1864. The lines shown in purple designate the

148 10, 20 and 30 mile limits of the definite location of the Lake Superior & Mississippi Railroad. The lines shaded in green designate the 20, 30 and 40 mile limits of the Northern Pacific Railroad; in each side of the central line,

each side of definite location. Diagram in red, full red lines, show the limits, twenty-five mile tangents, beginning at a point "A" Bluff Creek, Superior, and exhibiting from that point three tangents, "AB", "BC", and "CD", the lineage being based upon co-ordinates, constructed at right angles to these tangents. Line AF and line EB show a parallel system between both of the roads, and the parallel lines, AF, LM and BE HG, show the respective 20, 30 and 40 mile limits, and also the area covered by both.

Q. Both what?

A. By both lines, AF and DE is parallel.

Q. Captain, in this map you show the place limits, and the 10 and 20 mile limits of the Northern Pacific Railroad Company, as far as this map shows? A. Yes, sir.

Q. And you also show the general route, and the definite location of the Lake Superior & Mississippi Railroad Company in the State of Minnesota, with these limits, 10, 20 and 30 mile limits?

A. That is exactly correct, sir.

Q. By these shaded lines, in accordance with your opinion, the map is correct, showing both of these lines of the Northern Pacific and the Lake Superior & Mississippi road?

Mr. Sanders: Objected to as incompetent, irrelevant and immaterial.

A. You are perfectly correct.

Mr. Hoyt:

149 Q. Is that memorandum something that you made?

A. Yes, sir.

Q. I wish you would read and have the stenographer take it down.

Mr. Sanders: Objected as incompetent, irrelevant and immaterial.

Witness reads:

"Line marked in dash and ring is the general route of the Lake Lake Superior & Mississippi Railroad withdrawn May 26th, 1864.

Full lines with tie shading show the tracks of the Lake Superior and Mississippi and the Northern Pacific Railroads.

Full heavy lines on sectional lines show the original and amended limits of the Northern Pacific Railroad.

Lines shaded in yellow show the ten mile and outside limits, respectively, of the general route of the Lake Superior and Mississippi Railroad shown on the map filed May 7, 1864.

Lines marked in purple show the 10, 20 and 30 mile limits, respectively, of the Lake Superior and Mississippi Railroad.

Red lines "AB", "BC" and "CD" show tangents on the line of the line of the Northern Pacific projected on the 25 mile principle and the lines 1, 2, 3, 4, 5—6, 7, 8, 9, 10 show respectively the 40 mile limits of the Northern Pacific Railroad. Similar and parallel lines also in red show the 30 and 20 mile limits. The whole system is based on right angled ordinates to the tangents AB, BC, CD.

Line BE shows a tangent of the Lake Superior and Mississippi Railroad in parallel to tangent AF of the Northern Pacific in route A. F. B. C. D.

The rectangles A F G F C and E B L M show respectively the 40 mile limits constructed upon the tangents E. B. and A. F. The rectangle L.N.B.A. shows the area common to the limits of the tangents AF and EB.

Cross Examination,

By Mr. Sanders:

Q. Captain, you say that this map is a compilation?

A. Yes, sir.

Q. From what?

A. From records duly testified to in the possession of Mr. Hoyt.

150 Q. Certified?

A. Duly certified by the Land Department.

Q. Exactly. From what records is this map compiled?

A. Those exhibits here.

Q. From Exhibits H. and "I"?

A. Yes, sir.

Q. Is all the information shown on this map contained in Exhibits "H" and "I"? A. No, sir.

Q. The parallelograms shown on this map are not in Exhibits "H" and "I" are they?

A. No, that one isn't, from C to D.

Mr. Hoyt:

Q. You put those parallelograms on map yourself, it is your work? A. Yes, sir.

Mr. Sanders:

Q. Then all the parallelograms on this map are your work?

A. Yes, sir; they are in—

Q. They are not in fact taken from Exhibits "H" and "I", are they? A. Well, they are taken—part of them.

Q. Well, are they? A. Yes, sir.

Q. Then they are not taken from these exhibits?

A. No, not those lines are not. These parallelograms are my own work.

Mr. Sanders: Move to strike out all the testimony of this witness.

Mr. Hoyt: Exhibit J. offered in evidence—

Objected to as incompetent, irrelevant and immaterial.

151 Mr. Hoyt:

Complainant's Exhibit "K" offered in evidence, being the resolutions from the Northern Pacific Railroad Company Board of Directors, July 13, 1898 (exemplified copy) in reference to the acceptance of the railroad company with the Act of Congress Sundry Civil appropriation bill, approved July 1, 1898.

Complainant also offers in evidence Exhibit "L", being exemplified copy of the Northern Pacific Railroad Company's communication to the Secretary of the Interior, July 3, 1882, the filing of the map of the definite location of the Northern Pacific Railroad Company from a point on the main line at its junction with the St. Paul and Duluth Railroad near the right bank of the St. Louis River, in the State of Minnesota, thence in an easterly direction to a point in Section 15, Township 47 North, Range 2 West of the Fourth Principal Meridian, in the State of Wisconsin, filed July 6, 1882.

Complainant also offers in evidence Exhibit "M" being [and] exemplified copy from the Commissioner of the General Land Office, dated May 26th, 1864, to the Register and Receiver at Duluth, Minnesota; the order of withdrawal of the land from the sale or location, pre-emption or homestead settlement in aid of the construction of the Railroad from St. Paul to Lake Superior, and also the other withdrawal dated November 2, 1866, by the Commissioner of the General Land Office to the Register and Receiver at Duluth, Minnesota, order withdrawal for the benefit of the Lake Superior & Mis-

152 sissippi Railroad Company.

Mr. Sanders:

Objected to as incompetent, irrelevant and immaterial.

Mr. Hoyt:

Complainant offers in evidence Exhibit "N", being so much of list No. 2, of the land approved for the Lake Superior & Mississippi Railroad Company, March 26, 1868, and shows that all of Section 11, Township 46 North of Range 16, West, between the 10 and 20 mile limits of the Lake Superior and Mississippi Railroad in the Duluth Land District, is approved March 25th, 1868.

"Said list of lands in the district of lands, subject to sale at Duluth, Minnesota, outside of the ten and within the twenty mile limits of the reserve to satisfy the grant made to the State of Minnesota, by the Act of Congress approved May 5, 1864, bing an act granting public lands in alternate sections to the State of Minnesota to aid in the construction of the Lake Superior & Mississippi Railroad, being the land selected by the agent of the Governor of the State of Minnesota from the lands of the United States in alternate sections and parts of sections, designated by odd numbers, nearest to the tiers of sections within ten sections in width on each side of the railroad, from the City of St. Paul to the head of Lake Superior, and in lieu of the lands in the alternate sections designated by odd numbers within said ten sections in width, which the United States had legally sold or otherwise appropriated or to which the rights of pre-emption have attached.

Indemnity List No. 2 Approved March 25, 1868.

Copy sent to Governor May 27th, 1868.

Copy sent to local officers May 27th, 1868.

Approval noted on tract books May 29, 1868.

Certificate attached:

"General Land Office, March 20, 1868.

"I, Joseph S. Wilson, Commissioner of the General Land Office, do hereby certify that the foregoing on pages one and two, inclusive, is a true and correct list of the tracts of land selected by the agent of the State of Minnesota, outside of the Ten and within the Twenty Mile limits, under the act of congress approved May 5, 1864, entitled " An Act making a grant of lands to the State of Minnesota to aid in the construction of the Railroad from St. Paul to Lake Superior" and the Act amendatory thereof approved July 13, 1866,
153 the said selections being from the lands of the United States, in the alternate sections designated by odd numbers, most contiguous to the tier of sections within ten sections in width on each side of the road from the City of St. Paul to the head of Lake Superior," and being in lieu of the land in alternate sections designated by odd numbers within ten said sections in width on each side of said road, which the United States has legally sold, or to which the right of Pre-emption had legally attached, prior to the period at which the rights of the State inured under said grant; and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said acts of May 5th, 1864 and July 1, 1866, subject to all its conditions, and to any valid interferring rights which may exist to any of the tracts embraced in the foregoing list.

In Testimony Whereof, I have hereunto subscribed my name, and caused the seal of the General Land Office to be affixed, at the City of Washington, on the day and year first hereinabove written.

[Seal] JOSEPH S. WILSON,
Commissioner.

Department of the Interior.

Washington, City, March 25, 1868.

Approved, subject to the conditions and rights above mentioned.

O. H. BROWNING, Secretary."

Complainant offers in evidence Exhibit "O", being an exemplified copy of the approval of the selection of the Northern Pacific Railroad Company for indemnity on the S. W. 1/4 of the S. E. 1/4 of Section 7, Township 54, North of Range 14 West, for the loss of the N. W. 1/4 of the N. E. 1/4 of Section 11, Township 46, North of Range 16 West, date of approval October 17, 1905.

Complainant offers in evidence Exhibit "P", being Receiver of the United States Land Office receipt of Richard B. Jones, dated December 10, 1898, for the S. W. 1/4 of the S. E. 1/4 of Section 7, in Township 54, North of Range 14 West.

Mr. Sanders:

Objected to as incompetent, irrelevant and immaterial.

Mr Hoyt:

Complainant offers in evidence Exhibit "Q", being Special Warranty Deed, dated December 19, 1898, from Richard B. Jones and wife to Minnie Stewart, for the S. W. 1/4 of the S. E. 1/4 of Section 7, Township 54 North of Range 14 West. Deed recorded October 3, 1902.

154 Mr. Sanders:

Same objection.

Mr. Hoyt:

Complainant offers in evidence Exhibit "R", being deed from Minnie Stewart, and Moses Stewart, her husband, to Herbert H. Hoyt, dated March 22, 1902, for the S. W. 1/4 of the S. E. 1/4 of Section 7, Township 54 North of Range 14 West, acknowledged and duly recorded.

Stipulation:

It is hereby stipulated by and between the parties hereto that attached to Northern Pacific Railroad Company Selection

List, No. 15, filed October 17, 1883, and which list embraces the land in controversy in this case, is a certificate in words and figures following, to-wit:

State of Minnesota,
County of Ramsey—ss.

"I, Charles B. Lamborn, being duly sworn, depose and say: That I am the Land Commissioner of the Northern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Northern Pacific Railroad Company, as enuring to said company to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound on the Pacific Coast by the Northern route for which a land grant was made by the act of congress approved July 2, 1864, and by the Joint Resolution approved May 31st, 1870; that the said lands are vacant, unappropriated and are not interdicted mineral or reserved lands, and are of the character contemplated by the grant being within the limits of forty miles on each side of the line of the route for a continuance distance of miles of said railroad, commencing and ending

155

CHAS. B. LAMBORN, (L. S.)

Sworn to and subscribed before me this 15th day of October, 1883.

GEO. W. BOARD,
[Seal] Notary Public.

And it is further stipulated that attached to Northern Pacific Railroad Company's certified list No. 15B (which list embraces the land here in controversy) is a certificate in words and figures following, to-wit:

"Whereas, the Northern Pacific Railroad Company has heretofore, to-wit, on the 17th day of October, 1883, duly selected under the directions of the Secretary of the Interior those certain tracts and parcels of land particularly set forth and described in Duluth list No. 15, filed in the United States District Land Office, at Duluth, Minnesota, on the 17th day of October, 1883, as indemnity for certain tracts and parcels of odd-numbered sections of land within the limits of the grant to said railroad company, which said tracts were reserved, sold, granted and otherwise appropriated, or not free from pre-emption or other claims or rights at the time the line of its road was definitely located in accordance with the provisions of the act of congress approved July 2, 1864, and of the joint resolution of congress approved May 31, 1870, which lands so

situated are on and within forty miles of the line of the said road, as so definitely located.

"And, whereas, the Secretary of the Interior has, since the filing of said above described list, further directed that said list shall be rearranged so it shall indicate the specific loss in lieu of which each specific selection has been made. Now, therefore, to comply with the further requirements of the Interior Department, but not waiving or abandoning rights and claims heretofore acquired by virtue of its selection heretofore made under the direction of the Secretary of the Interior, the said Northern Pacific Railroad Company has herein designated the lands heretofore selected as indemnity in said Duluth list No. 15, and no other lands, and as herein set opposite each specific description of the land lost from its grant in place, and in lieu of which said indemnity land is selected."

St. Paul, Minnesota, April 10, 1893.

CHAS. B. LAMBORN,
Land Commissioner N. P. R. R. Co."

156 Mr. Hoyt: I want to introduce the first annual report of the Northern Pacific Railway to the Railroad Commissions in the State of Wisconsin, for the ten months, ending June 30th, 1897.

Now, I offer this report in evidence for the purpose of introducing in evidence on page 1, the first 1, 2, 3, 4 and 5 questions.

The first question:

Q. Name of Common Carrier making this report?

A. Northern Pacific Railway Company.

Second question: "Date of Organization: A. 1870."

Third Question: "Under the laws of what government, state or territory organized? If more than one, name all; give reference to each statute and all amendments thereof.

Answer: Wisconsin Special Act, approved March 15, 1870; amended January 20, 1871; March 6, 1871 and April 15, 1895, formerly entitled Superior & St. Croix Railroad Company; changed to present name by resolution of stockholders and directors, in July, 1896.

Fourth Question: If a consolidated company, name the constitutent companies; give reference to chapter of each and all amendments of name?

A. Not a consolidated Company.

Question Five. If an organized company, give name of original corporation, and refer to laws under which it was organized.

A. Not a consolidated company."

On page 2:

First Question: Name of Directors, and post office address and date of expiration of term?

Answer: Edward D. Adams, New York; Robert Macon, New York; Dumont Clark, Charles H. Coster, Robert M. Galloway, Brayton Ives, D. Willis James, Walter G.
157 Oakman, Samuel Spencer, Francis Lynde Stedson, James Stillman, Eban B. Thomas. All of New York, Charlemagne Tower, Jr., Philadelphia, E. W. Winter, St. Paul.

Total number of stockholders at date of last election 16.

Date of last meeting of stockholders for election, October 6, 1896.

Capital Stock of the Northern Pacific Railway Company, One Hundred and fifty-five Million Dollars.

Amount of Common Stock, Eighty Million.

Preferred Stock, Seventy-Five Million.

Total cost of road and equipment, September 1, 1896, property purchased at foreclosure, $293,947,706.35.

Equipment purchased at foreclosure, $12,692,180.00.

Note attached as follows:

"Inasmuch as property purchased at foreclosure embraced nearly Thirty-one million acres of land, it would be manifestly misleading to figure cost per mile on the amount shown hereunder the head "Cost per Mile".

On page 26, it appears as follows:

"This is the first annual report of the Northern Pacific Railway Company.

Mr. Sanders: All of which is objected to as incompetent, irrelevant and immaterial.

Duluth, Sept. 28, 1906.

Same Appearances.

Stipulation.

It is stipulated and agreed by and between the parties hereto that the land involved in this suit exceeds the value of $2,000.00.

Mr. Hoyt: I offer in evidence Exhibit "T", being
158 an exemplified copy of the extract from the journal of the Senate of the United States, 54th Congress, First Session, April 8th, 1896, on pages 228 and 229.

Mr. Sanders: Objected to as incompetent, irrelevant and immaterial.

Mr. Hoyt: I offer in evidence the certified copy of Congressional Record of the Senate, 54th Congress, Second Session, January 23rd, 1897, page 1099.

Mr. Sanders: Same objection.

Mr. Hoyt: Would like to withdraw this and put in copy which is consented to by Mr. Sanders.

Mr. Hoyt: Offer in evidence Exhibit "V". Annual report of the Northern Pacific Railway Company to the Railroad Commission of the State of Wisconsin, for the year ending June 30th, 1905, and refer to page 1, paragraph 1:

"Q. Name of common carrier making this report?
A. Northern Pacific Railway Company."

Paragraph 2:

"Q. Date of organization?
A. Chartered by State of Wisconsin, March 15th, 1870, amended March 6, 1871 and April 15, 1895."

Paragraph 3:

"Q. Under the laws of what government, state or territory organized? If more than one, name all, give reference to each statute, and all amendments thereof?
A. Same above."
"Q. Original name?
A. Superior & St. Croix R. R. Co., changed in July 1896, by Resolution of the Stockholders and Directors of the Northern Pacific Railway Company."

159 Paragraph 4:

"Q. If a consolidated Company, name the constituent Companies. Give reference to the charters of each, and all amendments of same?
A. Not a consolidated company."

On page 2:

"Q. Name of Directors, Post Office address and date of expiration of term?
A. George F. Baker, New York, October, 1907. Robert Baker, New York, October, 1907. William P. Clough, New York, October, 1905. Alexander H. Corchran, New York, 1905. Howard Elliott, St. Paul, October, 1906. Amos French, New York, October, 1905. James M. Hill, New York, October, 1905. D. Willis James, New York, 1907. John S.

Kennedy, New York, 1907. Louis D. Ledyard, New York, October, 1906. Daniel S. Lamont, New York, October, 1906. George W. Perkins, New York, October, 1906. Charles Steele, New York, October, 1906. John Sloan, New York, October, 1907. Payne Whitney, New York, October, 1905."

On Page 12: Capital Stock:

"Capital Stock? Common. Number of shares authorized, 1,550,000[00]; par value of shares: 100. Total par authorized, $155,000,000. Dividend, 7%, amounting to $10,850.00."

On page 14:

"Funded debt, mortgage bonds and miscellaneous obligations; Northern Pacific Railway Company, prior lien, 1897, due in 1997. One hundred and thirty miles; amount outstanding $103,939,500.00. Rate 4. General Line, in 1897, due in 2047; amount outstanding: 60 miles."

On page 18:

"Funded Debt. Recapitulation. Amount outstanding, $293,087,449.36."

On page 20:

"Northern Pacific Railway Company $155,000,000.00. Funded debt: $185,475,849.36."

On page 26:

"In reference to the cost of the road and equipments: $291,148,670.16."

160 On page 26 Memorandum is:

"It is impossible to give cost by classification, inasmuch as property purchased at foreclosure embraced nearly 31,000,000 acres of land, it would be manifestly misleading to figure cost per mile on the amount shown."

Mr. Sanders: Objected to as incompetent, irrelevant and immaterial.

Evidence taken on Behalf of the Defendants.

Mr. Sanders: We offer in evidence Exhibit "1", a copy of Northern Pacific Railway Company's Selected List, No. 15, wherein is selected the land in controversy, to-wit: The $SW\frac{1}{4}$ of $SE\frac{1}{4}$ of Section 7, in Township 54, North of Range 14 West of the Fourth Principal Meridian, Minnesota.

We offer in evidence Exhibit "2", being a copy of Northern Pacific Railway Company's Selection List, 15-B, wherein is

selected the land in controversy, to-wit: The $SW\frac{1}{4}$ of the $SE\frac{1}{4}$ of Section 7, in Township 54 North Range 14 West of the Fourth Principal Meridian, Minnesota.

We offer in evidence Exhibit "3", a certified copy of the map of the definite location of the Northern Pacific Railroad from a point on the main line of the Northern Pacific Railroad near the right bank of the St. Louis, in Minnesota, to a point in Section 15, Township 47 North, Range 2, West of the 4th Principal Meridian, in Wisconsin.

We offer in evidence Exhibit "4", certified copy of the map of the definite location of the Northern Pacific Railroad from Thompson Junction, Minnesota, to the Red River of the North, the border line between Minnesota and North Dakota.

Sherman H. Mason, called as a witness on behalf of the defendant, being first duly sworn testifies as follows:

Direct Examination,

By Mr. Sanders:

161 Q. What is your name? A. Sherman H. Mason.

Q. Where do you reside? A. St. Paul.

Q. What is your occupation?

A. Draftsman of the Land Department of the Northern Pacific.

Q. I hand you a map, Mr. Mason, will you please tell us what that map shows?

A. It is a blue print from the tracing of the constructed line of the Lake Superior & Mississippi Railroad, as filed in the office of the Governor of Minnesota on June 30th, 1870, covering the line of said railroad from St. Paul to Duluth, and being in four sections.

Cross Examination,

By Mr. Hoyt:

Q. You made that map from the original; did you make the map?

A. It was made under my direction.

Q. You didn't make it yourself? A. No sir.

Q. And it was made from the original—was there an original?

A. There is an original in the office of the Governor.

Q. Is that in the Governor's office?

A. The point is this, your Honor, the record in the Northern Pacific office is what they call a diagram, taken from the tracing in the Governor's office.

Q. You mean a photograph, a negative?

A. Practically a negative, a facsimile.
Q. That map is made from the negative?
A. This is made from the negative.
Q. And you didn't make it?
162 A. I saw it made.
Q. You saw it made, supervised it?
A. Yes sir.
Q. Your clerk made it?
A. Well, what we call the blue printer made it.

Mr. Sanders: We offer the map testified to by Mr. Mason in evidence as defendant's exhibit "5".

Mr. Hoyt: Objected to as incompetent and immaterial, because it is not the original map or an actual copy.

Mr. Sanders: I hand you another map, Exhibit "6", will you please tell us what this map is designed to show?
A. It is a general map showing on a small scale, for the sake of convenience, the railroads as shown on the other three maps previously offered, that is, defendant's Exhibits "3", "4" and "5".
Q. What is the red line?
A. The red line is the line of definite location of the Northern Pacific Railroad.
Q. From where to where?
A. From the Red River to Ashland, Wisconsin.
Q. What is the black line running North and South?
A. The black line is the line of constructed road of the Lake Superior and Mississippi Railroad.
Q. Did you prepare that map? A. Yes.
Q. From the three maps, defendant's Exhibits "3", "4" and "5"? A. Yes.

163 Q. Does it correctly show the crossing of the Northern Pacific Railroad with the Lake Superior and Mississippi Railroad? A. It does.

We offer the map last testified to by Mr. Mason in evidence as defendant's Exhibit "6".

Cross Examination

By Mr. Hoyt:
Q. Mr. Mason, did you prepare that map yourself?
A. Yes, sir.
Q. What did you prepare it from?
A. From the three maps previously offered in evidence.
Q. Yes, I know, but were they the official maps of the Government, or maps in your office, the Northern Pacific Railroad Company's office?

A. The maps and the records of the railroad company.

Q. You don't know whether those maps are correct or not, do you, from your own knowledge?

A. Nothing, except that they are practically certified copies.

Q. Certified by whom?

A. Certified by the Commissioner of the General Land Office.

Q. All three of them?

A. No, the Northern Pacific maps.

Q. Well, I mean all three of the maps that your composite maps are made of?

A. Two of them, the two maps of the Northern Pacific is certified by the Commissioner of the General Land Office.

Q. How is it with the Lake Superior and Mississippi map?

A. That is a facsimile of the map filed in the office of the Governor of Minnesota.

Q. And as far as you know that is the only evidence
164 that you have of its being an authenticated copy?

A. Yes, sir. From the fact—

Q. How long have you been in the employ of the Northern Pacific? A. My present position since July 1st, 1906.

Objected to Exhibit "6" as incompetent, and it does not appear to be an official map of the Government.

Sydney Livesey, called as a witness on behalf of defendants, being first duly sworn testifies as follows:

Direct Examination

By Mr. Sanders:

Q. What is your name? A. Sydney Livesey.

Q. What is your age? A. Twenty-Six years.

Q. Where do you live? A. St. Paul, Minnesota.

Q. What is your occupation? A. Stenographer.

Q. In whose employ?

A. In the employ of the Northern Pacific.

Q. Mr. Livesey, I hand you a paper marked "Original Order of Sale" and ask you, is this a true, full and correct copy of the original of that instrument, of that paper on file in the office of the United States Circuit Court for the District of Minnesota, Third Division? A. It is.

Q. Did you compare this paper with the original on file in the Clerk's office? A. I did, sir.

165 Q. Mr. Livesey, I hand you two papers, one designated "Amended Order of Sale" the other "Report of Sale" and ask you if these are true, full and correct copies of the originals of said paper on file in the office of the Clerk of the United States Circuit Court, for the District of Minnesota, Third Division?

A. This paper, "Report of Sale" is not a full copy of it. On page 4, we have left out counties prior to St. Louis County, and after the record as to St. Louis County comes other counties of the state, which have been left out. Except as to those, this is a true, and correct copy of the original on file in the Circuit Court of the United States, the Third District of Minnesota.

Q. Then is it a true and correct copy so far as St. Louis County is concerned?

A. Yes, sir, it is. As to the "Amended Order of Sale", I can certify that that is a true and correct copy.

Cross Examination

By Mr. Hoyt:

Q. Do those three copies have reference to one suit, the same suit? A. Yes, sir.

Q. What is the suit?

A. Farmer's Loan & Trust Company vs. Northern Pacific Railroad Company, Phillip B. Winston

Q. And others? A. Yes, sir.

Q. And all three have reference to the same?

A. Yes, Sir, all between the same parties.

166 Mr. Sanders: We offer in evidence the papers testified to by Mr. Livesey, designated "Original Order of Sale", as defendants Exhibit "7".

We also offer in evidence the paper testified to by Mr. Livesey and designated "Amended Order of Sale" as Defendant's Exhibit "8".

We also offer in evidence the paper testified to by Mr. Livesey, designated "Report of Sale" as defendant's Exhibit "9".

Mr. Hoyt: Object to Defendant's Exhibit "7", "8" and "9" as immaterial and incompetent. No foundation laid to introduce them.

Mr. Sanders:

Q. Mr. Livesey, in the Master's Report of the sale of the land, reference is had to a schedule commending said report, have you seen the original schedules on file in the office of the Clerk of the United States Circuit Court, District of Minnesota, Third Division? A. I have.

Q. I hand you a book marked "Schedule of Lands of the Northern Pacific Railroad Company in the State of Minnesota, to be sold as advertised, at the court houses of the counties in which said lands are situated under the Decree of the United States Circuit Court for the Eastern District of Wisconsin, dated May 25th, 1899, have you compared this book with the

original schedule on file with said Clerk, and, if so, to what extent?

A. I have compared this schedule with the one on file in the United States Circuit Court, District of Minnesota,
167 Third Division, as to schedule A-2 of the list of patented and selected lands of the Northern Pacific Railroad Company in the State of Minnesota, County of St. Louis.

Q. Did you examine it specially with reference to the Southwest Quarter of the Southeast Quarter of Section 7, Township 54, North of Range 14 West, the land here in controversy?

A. Yes, sir.

Q. Is this book which you now have in your hand, a true and correct copy of the original on file with the Clerk of the United States Circuit Court in so far as it relates to land last described? A. Yes, sir.

Q. To the best of your knowledge and belief is the whole book an exact duplicate of the original on file in the Clerk's office?

A. Yes, because the print and the form of setting it up, and any notes found herein are also found in that same copy.

We offer the schedule testified to by Mr. Livesey in evidence as Defendant's Exhibit "10".

Cross Examination.

By Mr. Hoyt:

Q. What is your position with the Northern Pacific Railroad Company? A. I am a stenographer.

Q. How long have you occupied that position?

A. In the Department that I am now since April 18th of this year.

Q. Well, in any department there as stenographer; did you commence as stenographer the 18th of September this year?

A. No, sir.

Q. How long have you been a stenographer there?

A. I begun work for the Northern Pacific on the 18th of November, 1903.

168 Q. 1903?

A. Yes, sir, and worked—

Q. What is the date of that report? A. This schedule?

Q. Yes. A. This is May 25th, 1899.

Q. Well, then you don't know anything about that except as you found it in the office, do you? A. Yes, sir.

Q. What do you know about it?

A. I know that I compared it with the schedule—

Q. No, no, no; I am speaking—before you did this work here. I am not asking you about your comparing it, I am asking you until you were employed in the office in 1903, you didn't know anything about that book, do you?

A. No, sir I did not.

Q. And you don't know now anything about it, except as you have found it in the office and compared it with the original papers in the United States Court, is that it?

A. No answer.

Q. Do you understand the question?

A. I don't see just what you are trying to get at, Judge.

Q. All the knowledge that you have of that book as to its being a correct and true copy is because you found it in the office among the papers of the Northern Pacific Railway Company, and then you took and compared it with the copy in the United States Circuit Court in the case, same case, is that all? A. Yes, sir, that is all.

169 Q. So you don't know—Do you know that man who made that report? A. No, sir, I do not.

Q. Nor when it was made, except by the date?

A. That's all.

Objected to it as incompetent and immaterial, and not properly identified.

Mr. Sanders: We offer in evidence, Exhibit "11", a certified copy of a decree by the United States Circuit Court, for the District of Minnesota, in the case of the Farmer's Loan & Trust Company vs. The Northern Pacific Railway Company, et al, dated May 27, 1896.

Mr. Hoyt: Object to the paper offered in evidence on the ground that it is immaterial and incompetent, and nothing to do with this suit.

Mr. Sanders: We offer in evidence, Exhibit 12, certified copy of an order made by the United States Circuit Court, for the District of Minnesota, in the case of the Farmer's Loan & Trust Company, complainant vs. Northern Pacific Railroad Company, et al, defendants, confirming the sale of the lands of the Northern Pacific Railroad Company by Alfred L. Carey, Special Master, dated September 20, 1899.

Mr. Hoyt: Objected to as incompetent and immaterial.

170 Mr. Sanders: We offer in evidence Exhibit "13", being a deed dated September 22, 1899, from Alfred L. Carey, as Special Master, and Edwin H. McHenry and Frank G. Bigelow, as Receivers of the Northern Pacific Railroad Company to the Northern Pacific Railway Company, embracing the land involved in this controversy, which said deed is recorded in St. Louis County, Minnesota, in Book 177 of Deeds, page 313.

Mr. Hoyt: Objected to as incompetent, immaterial.

Mr. Sanders: We offer in evidence Exhibit "14", a deed dated December 21, 1899, from the Northern Pacific Railroad Company to the Northern Pacific Railway Company, embracing the land involved in this controversy, which deed is recorded in St. Louis County, Minnesota, in Book 188 of Deeds, page 568.

Mr. Hoyt: Object to that as immaterial, and with no authority to convey.

Mr. Sanders: We offer in evidence Exhibit "15", copy of a deed dated January 19, 1900, from the Northern Pacific Railway Company to Frederick Weyerhaeuser and John A. Humbird, conveying the land involved in this controversy.

Stipulation.

It is hereby stipulated and agreed that the deed last offered in evidence by defendants is a true and correct copy of
171 the original thereof in so far as it relates to the land in controversy.

It is stipulated that the land in controversy, to-wit the Southwest Quarter of Southeast Quarter (SW 1/4 of SE 1/4) Section Seven (7), Township Fifty-four (54) North of Range Fourteen (14) West of the Fourth Principal Meridian, was patented to the Northern Pacific Railway Company on October 18, 1905.

Stipulation:

It is stipulated between the parties hereto that complainant's Exhibit "D", attached to the bill of complaint contains true copies of the act to incorporate the Superior & St. Croix Railroad Company and of certain acts amendatory thereto, and of the record of certain proceedings taken to change the name of the Superior & St. Croix Railroad Company to the Northern Pacific Railroad Company, and that an authenticate certified copy thereof was filed in the office of the Secretary of State for the State of Minnesota, and in the office of the Register of Deeds of Ramsey County, Minnesota, and that thereafter and on the 13th day of July, 1896, said railway company duly appointed Edwin W. Winter as its agent and empowered him and authorized him to accept service of summons in any civil action in which said corporation may be a party, which said appointment was duly filed in the office of the Secretary of State, State of Minnesota, in the office of the Register of Deeds of Ramsey County of the State of Minnesota, and that on the 23rd day of July, 1896, the Northern Pacific Railway Company duly paid the State Treasurer the State tax, in accordance with the act approved April 24th, 1899, on its original capital stock.

We offer in evidence a circular from the General Land Office containing regulations in respect to Act of Congress
172 approved July 1, 1898, as Defendant's Exhibit 16.

Duluth, Nov. 27, 1906.

Same Appearances:

Mr. Sanders: We offer in evidence as Defendants' Exhibit "17", copy of the Act of Congress approved April 28, 1904, entitled "An Act Validating certain conveyances of the Northern Pacific Railroad Company and the Northern Pacific Railway Company."

We offer in evidence as Defendant's Exhibit "18" copy of "An Act of Congress approved May 17, 1906, entitled "An Act for the Relief of Certain Entrymen and Settlers within the limits of the Northern Pacific Railway Land Grant."

Mr. Hoyt: Objected to as incompetent, irrelevant and immaterial as to both the above acts of congress.

It is stipulated that the above copies are true and correct copies of the original statutes.

In offering documentary evidence in this case certain certified copies were offered in evidence, which certified copies were, by consent of the parties, afterwards withdrawn, and copies of the same were substituted in their place.

It is hereby Stipulated and Agreed, By and between the parties hereto that the copies now in evidence as Exhibits shall be received in lieu of the certified copies originally offered in evidence.

173 54th Congress,
1st Session.

S. R. 124.

In the Senate of the United States.

April 8, 1896.

Mr. Mitchell, of Oregon, introduced the following joint resolution; which was read twice and referred to the Committee on the Judiciary.

Joint Resolution.

To facilitate the reorganization of the Northern Pacific Railroad Company, to secure to actual settlers the right to purchase at a price not exceeding two dollars and fifty cents per acre the agricultural lands within its grant, and to prohibit said company or any successor company from giving by consolidation,

sale, or other corporate action control of its railroad to any corporation, company, person or association of per-
174 sons owning, operating, or controlling a parallel or competing railroad.

1 Resolved by the Senate and House of Representatives of the
2 United States of America in Congress assembled, That the pur-
3 chasers of the railroad property of the Northern Pacific Railroad
5 in any suit or suits for the foreclosure of any of the mort-
6 gages heretofore executed by said company thereon, may or-
7 ganize anew by filing in the office of the Secretary of the Interior a
8 copy of the deed or deeds conveying said railroad and property with
9 a certificate, signed by

2

1 a majority of them, setting forth the name adopted by them, the names,
2 number and residences, respectively, of its directors, and a copy
3 of any plan of reorganization adopted by said purchasers or pur-
4 suant to which such purchase shall have been made. Upon filing
5 such certificates such purchasers, their associates, successors,
6 and assigns shall, by the name specified in said certificate, have
7 and be invested with all the estate, right, title, and interest
8 of said purchasers in and to such railroad and property, and shall
9 possess franchises, rights and powers the same as the Northern Pa-
10 cific Railroad Company, and shall be subject to all the obliga-
11 tions and duties imposed by Congress upon said company, and may
12 acquire and hold any property and branches of the Northern Pa-
13 cific Railroad Company; and it may acquire and construct addi-

tional branches or feeders in any State as authorized by the laws thereof; and upon such terms and conditions as may be provided in the plan of reorganization filed aforesaid it may from time to time issue such bonds, secured by mortgage upon its property and franchises or otherwise, not exceeding in the aggregate the sum of one hundred and ninety million dollars, and twenty-five thousand dollars additional per mile for railroad hereafter constructed, and such stocks, preferred or common, as shall have been authorized by such plan: Provided, That except as such stock shall have been issued for property acquired under such plan, no additional stock shall be issued,

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except for money, labor, or property estimated at its actual cash value, to the par or face value of the stock, and that any such mortgage shall be filed and recorded in the office of the Secretary of the Interior as sufficient proof and notice of its legal execution and effectual delivery and of the lien thereby created; Provided, That such successor company, its successors and assigns, shall sell to any applicant therefor for purpose of actual settlement and cultivation in tracts of not less than forty nor more than one hundred and sixty acres each at a price not exceeding two dollars and fifty cents per acre, any agricultural land, lying more than one mile from said railroad and then unsold, heretofore granted by Congress to the Northern Pacific Railroad Company and acquired by purchasers as aforesaid, but this proviso shall not apply to lands chiefly valuable for timber, coal, iron, or stone; and said Company may reserve to itself, its successors and assigns, in the sale of any lands applied for hereunder, merchantable timber and stone not needed for building and fencing thereon, and all coal and iron which may be found therein, and the right to take therefrom gravel for its own

uses: Provided, however, That said company shall have the right
to reserve from sale hereunder and to otherwise dispose of
such tracts or bodies of arid lands as it shall deem necessary
or advisable for use in any way in promoting and developing
irrigation, through companies or associations organized under

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and subject to the laws of the States in which such lands
are situated; And provided, That neither the Northern
Pacific Railroad Company nor such successor corporation, its
successors or assigns, shall consolidate its stock with
or sell, convey or lease said railway, or by other corporate action give control or management over and of the same,
to any corporation, company, person, or association of persons
owning, operating of controlling a parallel and competing line
of railway; and any contract entered into by said successor
company in violation of the provisions hereof shall be null and
void, and may be enjoined at the suit of the United States
or any State in which said road or any part thereof is situate
in any court of competent jurisdiction: And provided also,
that nothing herein contained shall be construed as making
any additional grant of lands to such successor corporation or
as a waiver of any right of the United States now existing
to enforce any forfeiture of lands heretofore granted to the
said Northern Pacific Railroad Company or as in any manner
affecting the vested rights of any settler or settlers on any of
the lands heretofore granted to the Northern Pacific Railroad
177 21 company or of any purchaser or purchasers of any such lands
22 from said company.

Endorsed on back:

54th Congress,
1st Session.

S. R. 124.

Joint Resolution.

To facilitate the reorganization of the Northern Pacific Railroad Company; to secure to actual settlers not exceeding two dollars and fifty cents per acre the agricultural lands within its grant, and to prohibit said company or any successor company from giving by consolidation, sale, or other corporate action control of its railroad to any corporation, company, person or association of persons owning, operating or controlling a parallel or competing railroad.

By Mr. Mitchell,
of Oregon.

April 8, 1896.—Read twice and referred to the Committee on the Judiciary.

(Copy.)

(Calendar No. 821.)

54th Congress,
1st Session.

S. R. 124.

(Report No. 776.)

In the Senate of the United States.

April 8, 1896.

Mr. Mitchell, of Oregon, introduced the following joint resolution; which was read twice and referred to the Committee on the Judiciary.

April 21, 1896.

Reported by Mr. Mitchell, of Oregon, with amendments, viz.: Omit the parts struck through and insert the parts printed in italics.

178 Joint Resolution.

To facilitate the reorganization of the Northern Pacific Railroad Company; to secure to actual settlers the right to purchase at a price not exceeding two dollars and fifty cents per acre the agricultural lands within its grant, and to prohibit said company or any successor company from giving by consolidation, sale, or other corporate action control of its railroad to any corporation, company, person, or association of persons, owning, operating, or controlling a parallel or competing railroad.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the purchasers of the railroad property of the Northern Pacific Railroad Company, which may at any time hereafter be sold as a judicial sale in any suit or suits for the foreclosure of any of the mortgages heretofore executed by said

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company thereon, may organize anew by filing in the office of the Secretary of the Interior a copy of the deed or deeds conveying said railroad and property with a certificate, signed by a majority of them, setting forth the name adopted by them, the names, number and residences, respectively; of its directors, and a copy of any plan of reorganization adopted by said purchasers or pursuant to which such purchase shall have been made. Upon filing such certificate such purchasers, their associates, successors, and assigns, shall, by the name specified in said certificate, have and be invested with all the estate, right, title, and interest of said purchasers in and to such railroad and property, and shall possess franchises, rights,

179 13

and powers the same as the Northern Pacific Railroad Company, and shall be subject to all the obligations and duties imposed by Congress upon said company, and may acquire and hold any property and branches of the Northern Pacific Railroad Company; and it may acquire and construct additional branches or feeders in any State as authorized by the laws thereof; and ~~upon such terms and conditions as may be provided in the plan of reorganization filed aforesaid~~ it may

from time to time issue ~~such~~ bonds, secured by mortgage upon its property and franchises or otherwise, not exceeding in the aggregate the sum of one hundred and ninety million dollars, and twenty-five thousand dollars additional per mile for railroad hereafter constructed, the interest on any of which bonds

3

shall not exceed four per centum per annum, and ~~such~~ stocks, preferred or common, ~~as shall have been authorized by such plan~~, not exceeding in the aggregate one hundred and fifty-five million dollars, of which amount not exceeding seventy-five million dollars may be preferred, but the preference of the preferred stock as to dividends shall not exceed four per centum per annum: Provided, That except ~~as~~ such stock as shall ~~have been~~ be issued for property acquired under such ~~plan~~ foreclosure proceedings, no additional stock shall be issued except for money, labor, or property, ~~estimated~~ at its actual cash value, to the par or face value of the stock, which may be common stock or preferred stock, or both, as may be authorized at stockholders' meetings, and that any such mortgage shall be filed and recorded in the office of the Secretary of the Interior as sufficient proof and notice of its legal execution and effectual delivery and of the lien

180 thereby created: Provided, that such successor company, its successors and assigns, shall sell to any applicant therefor

for purposes of actual settlement and cultivation in tracts of not less than forty nor more than one hundred and sixty acres each at a price not exceeding two dollars and fifty cents per acre, any agricultural lands, lying more than one mile from said railroad and then unsold, heretofore granted by Congress to the Northern Pacific Railroad Company and acquired by purchasers as aforesaid, but

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this proviso shall not apply to lands chiefly valuable for timber, coal, iron, or stone; and said company may reserve to itself, its successors and assigns, in the sale of any lands applied for hereunder, merchantable timber and stone not needed for building and fencing thereon, and all coal and iron which may be found therein, and the right to take therefrom gravel for its own uses: Provided, however, That said company shall have the right to reserve from sale hereunder and to otherwise dispose of such tracts or bodies of arid lands as it shall deem necessary or advisable for use in any way in promoting and developing irrigation, through companies or associations organized under and subject to the laws of the States in which such lands are situated: And provided further, That neither the Northern Pacific Railroad Company nor such successor corporation, its successors or assigns, shall consolidate its stock, or the stock at any time by it held in any [subsidairy] corporation, with or sell, convey, or lease said railway, or by other corpor-

ate action give control or management over and of the same, to any corporation, company, person, or association, of persons ~~owning, operating, or controlling a parallel and competing line of railway~~ whatever without the consent of Congress; and any contract entered into by said successor company in violation of the provisions hereof shall be null and void, and may be enjoined at the suit of the United States or any State in which said road or any any part thereof is situate.

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in any court of competent jurisdiction: And provided also that nothing herein contained shall be construed as making any additional grant of lands to such successor corporation or as a waiver of any right of the United States now existing to enforce any forfeiture of lands heretofore granted to the said Northern Pacific Railroad Company or as in any manner affecting the vested rights of any settler or settlers on any of the lands heretofore granted to the Northern Pacific Railroad Company or of any purchaser or purchasers of any such lands from said company.

Sec. 2. That Congress shall at all times have the power to alter, amend or repeal this resolution.

Calendar No. 821.

Endorsed on back:

54th Congress,
1st Session.

S. R. 124.

(Report No. 776.)

Joint Resolution.

To facilitate the reorganization of the Northern Pacific Railroad Company, to secure to actual settlers the right to purchase at a price not exceding two dollars and fifty cents per acre the agricultural lands within its grant, and to prohibit said company or any successor company from

giving by consolidation, sale, or other corporate action control of its railroad to any corporation, company, person, or association of persons owning, operating, or controlling a parallel or competing railroad.

By MR. MITCHELL, of Oregon.

April 8, 1896. Read twice and referred to the Committee on the Judiciary.

April 21, 1896. Reported with amendments.

54th Congress,
1st Session.

S. R. 124.

In the Senate of the United States.

Ordered to be printed. May 16, 1896.

Amendment.

Intended to be proposed by Mr. Jones, of Arkansas, to the joint resolution (S. R. 124) to facilitate the reorganization of the Northern Pacific Railroad Company, to secure to actual settlers the right to purchase at a price not exceeding two dollars and fifty cents per acre the agricultural lands within its grant, and to prohibit said company or any successor company from giving by consolidation, sale, or other corporate action control of its railroad to any corporation, company, person, or association of persons owning, operating or controlling a parallel or competing railroad, viz: At the end of the resolution insert the following:

Provided further, that the said purchasers of the rail-
183 road property of the Northern Pacific Railroad Company shall
not acquire and hold any property within the Yellowstone
National Park on any bond or security of any corporation or
company doing business therein. It may, however, make
traffic agreement concerning the transportation of persons
or property to and from said park: And provided further, that
said purchasers shall carry out all existing traffic and operat-

2

ing agreements of the Northern Pacific Railroad Company
and its receivers, and all decrees and orders made by the

11 Federal Courts in the receivership of said road.
Endorsed on back:

54th Congress,
1st Session.

S. R. 124.

Amendment.

Intended to be proposed by Mr. Jones, of Arkansas, to the joint resolution (S.R.124) to facilitate the reorganization of the Northern Pacific Railroad Company; to secure to actual settlers the right to purchase at a price not exceeding two dollars and fifty cents per acre the agricultural lands within its grant, and to prohibit said company, or any successor company from giving by consolidation sale, or other corporate action control of its railroad to any corporation, company, person or association of persons owning, operating, or controlling a parallel or competing railroad.

May 16, 1896. Ordered to be printed.

54th Congress,
1st Session.

S. R. 124.

184 In the Senate of the United States.

Ordered to be printed. May 25, 1896.

Amendment.

Intended to be proposed by Mr. Jones, of Arkansas, to the joint resolution (S.R.124) to facilitate the reorganization of the Northern Pacific Railroad Company; to secure to actual settlers the right to purchase, at a price not exceeding two dollars and fifty cents per acre, the agricultural lands within its grant, and to prohibit said company or any successor company from giving, by consolidation, sale, or other corporate action control of its railroad to any corporation, company, person, or association of persons, owning, operating, or controlling a parallel or competing railroad, viz: At the end of the resolution insert the following:

1 Provided further, that said purchasers of the rail-
2 road property of the Northern Pacific Railroad Company shall not
3 acquire and hold any property within the Yellowstone National
4 Park, or any stock, bond, or security of any corporation or
5 company doing business therein. It may, however, make traffic

agreements concerning the transportation of persons or property
to and from said park: And provided further, that said purchasers shall carry out all existing traffic and operating agreements of the Northern Pacific Railroad Company and its
receivers, and all decrees and orders made by the Federal courts in the receivership of said road.

185 Endorsed on back:

54th Congress,
1st Session.

S. R. 124.

Amendment.

Intended to be proposed by Mr. Jones of Arkansas, to the joint resolution (S. R. 124) to facilitate the reorganization of the Northern Pacific Railroad Company, to secure to actual settlers the right to purchase, at a price not exceeding two dollars and fifty cents per acre, the agricultural lands within its grant, and to prohibit said company or any successor company from giving by consolidation, sale, or other corporate action, control of its railroad to any corporation, company, person, or association of persons, owning, operating, or controlling a parallel or competing railroad.

May 25, 1896. Ordered to be printed.

54th Congress,
1st Session.

S. R. 124.

In the Senate of the United States.

June 5, 1896.

Referred to the Committee and the Judiciary and ordered to be printed.

June 5, 1896.

Reported Favorable by Mr. Mitchell, of Oregon.

Amendment.

Intended to be proposed by Mr. Mitchell, of Oregon, to the joint resolution (S. R. 124) to facilitate the reorganization of the Northern Pacific Railroad Company; to secure
186 to actual settlers the right to purchase at a price not exceeding two dollars and fifty cents per acre the agricultural lands within its grant, and to prohibit said company or any successor company from giving by consolidation, sale, or other corporate action control of its railroad to any cor-

poration, company, person, or association of persons, owning, operating, or controlling a parallel or competing railroad, viz:

And to the end of the first section the following:

And provided further, That in every case of failure of the title to any lands heretofore conveyed or contracted to be sold by said Northern Pacific Railroad Company, any and all rights of such purchaser or his assigns in respect of such land, on it respect of the failure of such title or in respect to the liability of said Northern Pacific Railroad Company on said contracts for the sale of lands, and all judgments heretofore or hereafter rendered against said Northern Pacific Railroad Company or against any of the receivers thereof

2.

in any court of the United States or in any State court, on account of any such failure of title, or on any covenants of warranty, or on account of any injury to any person or property, shall survive and may be enforced against such successor company with the same force and effect and in the same manner as against the Northern Pacific Railroad Company;

and all debts and liabilities which said Northern Pacific Railroad Company or the receivers thereof may have incurred on account of injuries to person and property, and on any covenants of warranty in any contract or deed for the conveyance of lands, shall, when final judgment thereon has been

187 or may hereafter be obtained, be paid by such reorganized company and may be enforced by execution or other proper final process directly against such reorganized company and its property and shall be a prior lien thereon; and this act is upon condition that such successor company shall within thirty days from the passage of this Act file in the office of the Secretary of the Interior its assent thereto and all the provisions thereof, and on failure to do so this Act shall become ipso facto null and void.

54th Congress,
1st Session.

S. R. 124.

In the Senate of the United States.

June 5, 1896.

Referred to the Committee on the Judiciary and ordered to be printed.

Amendment.

Intended to be proposed by Mr. Nelson to the joint resolution (S. R. 124) to facilitate the reorganization of the Northern Pacific Railroad Company; to secure to actual settlers the right to purchase at a price not exceeding two dollars and fifty cents per acre the agricultural lands within its grant, and to prohibit said company or any successor company from giving, by consolidation, sale, or other corporate action, control of its railroad to any corporation, company, person, or association of persons owning, operating, or controlling a parallel or competing railroad, viz:

At the end of the resolution insert the following.

188 1 And provided further, That such successor company, its
2 successors and assigns, shall succeed to all the rights and
3 be subject to all the liabilities created by any and all con-
4 tracts for the sale of lands heretofore granted by Congress to
5 the Northern Pacific Railroad Company, which said railroad
6 company or its receiver or receivers have made or shall make
7 prior to the acquisition of said lands by said successor company.

54th Congress,
1st Session.

S. R. 124.

In the Senate of the United States.

June 6, 1896.

Ordered to be printed.

Amendment.

Intended to be proposed by Mr. Smith to the joint resolution (S. R. 124) to facilitate the reorganization of the Northern Pacific Railroad Company; to secure to actual settlers the

right to purchase at a price not exceeding two dollars and fifty cents per acre the agricultural lands within its grant, and to prohibit said company or any successor company from giving, by consolidation, sale, or other corporate action, control of its railroad to any corporation, company, person, or association of persons owning, operating, or controlling a parallel or competing railroad, viz: On page 2 in line 23, after the word "plan", insert the following:

Provided, however, That in consideration of the provisions of this resolution, the said organization by this resolution contemplated shall take up all the bonds of the Seattle, Lake Shore and Eastern Railway Company which were in any wise or at any time guaranteed by the Northern Pacific Railroad Company, and in exchange therefor issue an equal value of first-mortgage bonds of the new company by this resolation authorized as aforesaid.

I, Charles G. Bennett, Secretary of the United States Senate, do hereby certify that the foregoing typewritten sheets numbered consecutively 1 to 13 inclusive, are true and accurate copies of the printed originals thereof in the files of this Office.

Given this day under my hand and the seal of the Senate of the United States this second day of June, A. D., nineteen hundred and six.

[Seal] CHARLES G. BENNETT, Secretary.

Endorsed: Complainant's Exhibit E. Filed Dec. 1, 1906. Henry D. Lang, Clerk, by E. Catherine Neff, Deputy Clerk.

190 Complainant's Exhibit F.

Calendar No. 821.

Senate.

54th Congress,
1st Session.

(Report No. 776.)

In the Senate of the United States.

April 21, 1896. Ordered to be printed.

Mr. Mitchell, of Oregon, from the Committee on the Judiciary Submitted the following:

CHARTS

TOO

LARGE

FOR

FILMING

Report:

(To accompany S. R. 124.)

The committee on the judiciary, to whom was referred the joint resolution (S. R. 124) to facilitate, the reorganization of the Northern Pacific Railroad Company; to secure to actual settlers the right to purchase at a price not exceeding $2.50 per acre the agricultural lands within its grant, and to prohibit said company or any successor company from giving by consolidation, sale, or other corporate action control of its railroad to any corporation, company, person, or association of persons owning, operating, or controlling a parallel or competing railroad, having had the same under consideration, beg to submit the following report.

The purpose of this proposed legislation may be stated in a few words. It has been made to appear to your committee that the land grant and other property of the Northern Pacific Railroad Company, all of which is covered by mort-
191 gage liens, will at a very early date be sold under forclosure proceedings. This joint resolution, should it become a law, will enable the purchasers at such foreclosure sale, upon filing in the office of the Secretary of the Interior a copy of the deed or deeds conveying to them said railroad and property, together with a certificate signed by a majority of them, setting forth the name adopted by them, the names, number, and residences, respectively of the directors of the proposed new company, and a copy of any plan of reorganization adopted by said purchasers, or pursuant to which such purchase shall have been made, to reorganize under the name specified in such certificate, so that they, their associates, successors, and assigns shall have and be vested with all the estate, right, title, and interest of such purchasers in and to such railroad and property, and shall possess franchises, rights and powers the same as the Northern Pacific Railroad Company now possesses; such new company to be subject to all the obligations and duties imposed by Congress upon the Northern Pacific Railroad Company. Such new company is authorized to acquire and hold any property and branches of the Northern Pacific Railroad Company.

It may also acquire and construct additional branches or feeders in any State, in the manner authorized by the laws of such State, and may issue bonds secured by mortgage upon its property, franchises, and otherwise, not exceeding in the aggregate the sum of $190,000,000 and $25,000 additional per mile for railroad hereafter constructed.

This limit of bonds, not including those authorized on newly

constructed road, is some $18,000,000 less in amount than the bonds now outstanding of the Northern Pacific.

A limit is also placed upon the amount of stock to
192 be issued by the new company. The aggregate shall not exceed $155,000,000, of which amount not exceeding $75,000,000 may be preferred, but the preference of the preferred stock shall not exceed 4 per centum per annum. Furthermore, such stock shall only be issued for property acquired under such foreclosure proceedings; no additional stock to be issued, except for money, labor, or property, at its actual cash value to the par or face value of the stock.

This resolution places certain restrictions on the new company to which the Northern Pacific Railroad Company is not subject.

It provides that such company shall sell to any applicant therefor, for purposes of actual settlement and cultivation, in tracts of not less than 40 nor more than 160 acres each, at a price not exceeding $2.50 per acre, any agricultural land lying not more than a mile from its road and then unsold, of the lands heretofore granted to the Northern Pacific Railroad and acquired by the purchasers under such foreclosure proceedings. This restriction, however, is not to apply to lands chiefly valuable for timber, coal, iron, or stone, nor to arid lands; the new company having the right to reserve from such sale arid lands, and to otherwise dispose of such tracts or bodies of the same as it shall deem necessary or advisable, for use in any way in promoting or developing irrigation through companies or associations organized under and subject to the laws of the States in which such lands are situated.

It is also provided in this measure that neither the Northern Pacific Railroad Company nor such successor corporation, its successor or assigns, shall consolidate its stock, or the stock at any time by it held in any subsidiary corporation with, or sell, convey, or lease said railway, or by other corporate action give control or management over and of the same
193 to any corporation, company, person, or association of persons whatever without the consent of Congress; and any contract entered into by such successor company in violation of such provisions shall be null and void, and may be enjoined at the suit of the United States or any State in which said road or any part thereof is situate, in any court of competent jurisdiction.

The resolution also provides that nothing in it contained shall be construed as making any additional grant of lands to such successor corporation, or as a waiver of any right of

the United States now existing to enforce any forfeiture of lands heretofore granted to the said Northern Pacific Railroad Company, or as in any manner affecting the vested rights of any settler or settlers on any of the lands heretofore granted to the Northern Pacific Railroad Company, or any purchaser or purchasers of such lands from said company.

The right to alter, amend or repeal this resolution is also by express terms reserved by Congress.

Your committee therefore report back the joint resolution. (S. R. 124) with the following amendments, and recommend its passage:

On page 2, in lines 16 and 17, strike out the following words: "upon such terms and conditions as may be provided in the plan of reorganization filed aforesaid."

On page 2, in line 18, strike out the word "such."

On page 2, in line 22, after the word "constructed", insert the following words: "the interest on any of which bonds shall not exceed four per centum per annum."

On page 2, in line 22, strike out the word "such".

On page 2, in line 23, strike out the following words: "as shall have been authorized by such plan," and insert in lieu thereof the following: "not exceeding in the ag-
194 gregate one hundred and fifty-five million dollars, of which amount not exceeding seventy-five million may be preferred, but the preference of the preferred stock as to dividends shall not exceed four per centum per annum."

On page 2, in line 24, strike out the third word "as", and insert in the same line, after the word "stock", the word "as", and strike out in the same line the word "have" and insert in lieu thereof the word "be".

On page 2, in line 25, strike out the following words: "Under such plan," and insert in lieu thereof the following: "under such foreclosure proceedings."

On page 3, in line 1, strike out the word "estimated".

On page 3, in line 2, after the word "stock", insert the following: "which may be common stock or preferred stock or both, as may be authorized at stockholders' meeting".

On page 4, in line 4, after the word "stock" insert the following: "or the stock at any time by it held in any subsidiary corporation."

On page 4, in lines 7, 8, and 9, strike out the following

words: "owning, operating, or controlling a parallel and competing line of railway," and insert in lieu thereof the following words: "whatever without the consent of Congress."

Add to the end of the resolution the following: "That Congress shall at all times have the power to alter, amend, or repeal this resolution."

U. S. Senate, Office of the Secretary.

I, Charles G. Bennett, Secretary of the United States Senate, do hereby certify that the foregoing printed
195 paper, number pages 1 to 3, inclusive, is a correct and authentic copy of the original thereof on file in this office. Senate Report No. 776, 54th Congress, 1st Session.

Given under my hand and the seal of the Senate of the United States this Second day of June, A. D. nineteen hundred and six.

[Seal] CHARLES G. BENNETT, Secretary.

Endorsed: Complainant's Exhibit F. Filed Dec. 1, 1906. Henry D. Lang, Clerk, by E. Catherine Neff, Deputy Clerk.

196 Complainant's Exhibit G.

Extract from the Journal of the Senate of the United States.

Fifty-fourth Congress, April 8, 1896.
First Session. Pages 228, 229.

Mr. Mitchell, of Oregon, introduced a joint resolution (S. R. 124) to facilitate the reorganization of the Northern Pacific Railroad Company; to secure to actual settlers the right to purchase at a price not exceeding $2.50 per acre the agricultural lands within its grant, and to prohibit said company or any successor company from giving by consolidation, sale, or other corporate action control of its railroad to any corporation, company, person, or association of persons owning, operating, or controlling a parallel or competing railroad; which was read the first and second times by unanimous consent and referred to the committee on the Judiciary.

April 21, 1896.
Page 253.

Mr. Mitchell, of Oregon, from the Committee on the Judiciary, to whom was referred the joint resolution (S. R. 124) to facilitate the reorganization of the Northern Pacific Railroad Company, to secure to actual settlers the right to purchase at a price not exceeding $2.50 per acre the agricultural lands within its grant,

and to prohibit said company or any successor company from giving by consolidation, sale or other corporate action control
of its railroad to any corporation, company, person,
197 or association of persons owning, operating, or controlling a parallel or competing railroad, reported it with amendments and submitted a report (No. 776) thereon.

I, Charles G. Bennett, Secretary of the United States Senate, do hereby certify that the foregoing typewritten sheet is a true and accurate copy of entries in the Journal of the Senate of the United States relating to the joint resolution (S. R. 124), 54th Congress, First Session.

Given under my hand and the seal of the Senate of the United States this Second day of June, A. D. nineteen hundred and six.

[Seal] CHARLES G. BENNETT, Secretary.

Endorsed: Complainant's Exhibit G. Filed Dec. 1, 1906. Henry D. Lang, Clerk, by E. Catherine Neff, Deputy Clerk.

198 Complainant's Exhibit K.

Northern Pacific Railway Company Board of Directors. July 13, 1898.

"Resolved; That the Northern Pacific Railway Company hereby accepts the provisions of the Sundry Civil Appropriation Bill, approved by the President of the United States July 1, 1898, concerning the land grant of the Northern Pacific Railroad Company; and that the Vice-President of this Company be, and hereby is, authorized to communicate to the Secretary of the Interior such acceptance by this Company, of the provisions of the Sundry Civil Appropriation Bill.

I, George H. Earl, Secretary of the Northern Pacific Railway Company hereby certify that the foregoing is a true copy of a resolution adopted by the Board of Directors of said Company at their meeting held on the 13th day of July, 1898.

GEO. H. EARL, Secretary.

Endorsed on back: 2972. Dep't of the Interior received July 22, 1898, L. & R. R. Div. 1898—74045.

Northern Pacific Railway Company,
Office of the Vice President. 35 Wall Street, New York.
July 21, 1898.

Sir: I beg to enclose herewith a certified copy of a resolution adopted by the Board of Directors of the North-
199 ern Pacific Railway Company, formally accepting on the part of this Company the provisions of the Sundry Civil Appropriation Act, approved July 1st, 1898, having reference to the land grant of this Company.

Very respectfully,
DANIEL S. LAMONT, Vice-president.

The Secretary of the Interior, Washington, D. C.
(Inclosure)

Endorsed on back: J. I. P. A. M.
Dept. of the Interior. July 23 '98.
Acknowledged and Respectfully referred to the Com'r Gen'l Office. Edward M. Dawson, Chief Clerk.
No answer required. File with Nor. Pac. R. R. papers. Marr.
U. S. General Land Office Received July 26, 1898. 74045.
Department of the Interior, Received July 22, 1898. 2972.
Daniel S. Lamont, Vice-President,
200 No. Pac. Ry. Co. July 21/98.
Encloses certified copy of the resolution adopted by the Board of Directors, No. Pac. Ry. Co., formally accepting on the part of said company, provisions of Sundry Civil Appropriation Act, Approved July 1st, 1898, having reference to land grant of N. P. Ry. Co.

Chief Clerk
July 22, 1898
Department of the Interior

F

43/142

1 E
S. S. M.
4-207. S. S. M.
F

Department of the Interior,
General Land Office.

Washington, D. C., May 19, 1906.

I hereby certify that the annexed copies relating to the acceptance by the Northern Pacific Railway Company of the provisions of the Act of July 1, 1898, are true and literal exemplification from the original and the certified copy on file in this office.

In testimony whereof I have hereunto suscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

[Seal]

W. A. RICHARDS,
Commissioner of the General Land Office.

201 Endorsed: Complainant's Exhibit K. Filed Dec. 1, 1906. Henry D. Lang, Clerk, by E. Catherine Neff, Deputy Clerk.

202 Complainant's Exhibit L.

Northern Pacific Railroad Company,
(Presidents Office)

New York, July 3d, 1882.

Hon. H. M. Teller,
Secretary of the Interior,
Washington, D. C.

Sir: I have the honor to inform you that I have to-day sent to your address by express, the map or plat of the definite location of the Main Line of the Northern Pacific Railroad from a point on the main line of said railroad at its junction with the St. Paul & Duluth Railroad near the right bank of the St. Louis river in the State of Minnesota thence in an easterly direction to a point in Section 15, Township 47 North Range 2 West of the 4th Principal Meridian in the State of Wisconsin, lying and being partly in the State of Minnesota, and partly in the State of Wisconsin.

The map is duly verified by the Chief Engineer and certified by me as the President, of the Company, and I respectfully re-

quest that it be transmitted to the Hon. the Commissioner of the General Land Office for filing in his office and for such necessary and appropriate action thereon as shall be in compliance with law and the practice of the Department.

I beg leave to refer to Section 3 of the Act of Congress, approved July 2, 1864, commonly known as the Charter of the Northern Pacific Railroad Company.

203 I have the honor to be,
Very respectfully,
Your obedt. Servant,
H. WILLARD, President.

Endorsed on the back:

Department of the Interior
General Land Office.
Rec'd July 6, 1882.

M. 2090. L. & R. R. Div. 53118

H. Villard, President,
New York City,
3d July, 1882.

Transmits map of definite location of Nor. Pac. R. R., partly in Minn. & partly in Wisconsin from junction with St. Paul & Duluth in Minn. to a point in Wisconsin.

F 1 paper and map

1 Enc.

1 paper and map— Z. B. S.

Dept. of the Interior,

5 July, 1882,

Respectfully referred to the Com'or Gen'l Land Office.

GEO. M. LOCKWOOD, Chief Clerk.

F.
S. S. M. 4-207 S. S. M.

Department of the Interior,
204 General Land Office,

Washington, D. C., May 19, 1906.

I hereby certify that the annexed copy is a true and literal exemplification from the original on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

[Seal]

W. A. RICHARDS,
Commissioner of the General Land Office.

Endorsed: Complainant's Exhibit L. Filed Dec. 1, 1906. Henry D. Lang, Clerk, by E. Catherine Neff, Deputy Clerk.

Complainant's Exhibit M.

205 S. S. M. 4-207 a.
F

Department of the Interior,
General Land Office,

Washington, D. C., May 19, 1906.

I, W. A. Richards, Commissioner of the General Land Office do hereby certify that the annexed copies are true and literal exemplifications from the originals on file or of record in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

[Seal]

W. A. RICHARDS,
Commissioner of General Land Office.

J. F. S.
C. M. B.
Ex'd

General Land Office,
May 26th, 1864.

X

Register and Receiver,
Taylor's Falls, Minn.

Ackd.
June
3d 64
G. 38, 266.

Gentlemen: By act appd May 5th, 1864, a grant of land was made to the State of Minnesota to aid in the construction of a Railroad from St. Paul to Lake Superior.

206 The Secretary of the Interior having approved of a withdrawal of lands for said road, you will suspend from pre-emption settlement and sale a body of lands about twenty miles in width as indicated on the enclosed diagram "A" marked "Lake Superior and Mississippi Railroad".

Acknowledged the date of receipt of this.

Very respectfully,
Your obt. Servt.,

J. M. EDMONDS,
Commissioner.

X.

Also to Reg. & Rec. at Duluth, Minn., of same date withdrawing lands for Lake Superior & Mississippi R. Road.

xd.
M. M.
L. E. G.

Department of the Interior,

Washington D. C., Oct. 12th, 1866.

Sir: I enclose herewith for your information and report a letter dated 18th ultimo from the Governor of Minnesota with the map of the Lake Superior and Mississippi Railroad, authorized to be constructed by the Act of Congress approved May 5th, 1864, and the amendatory Act of the Legislature of said State referred to therein.

It appears from the records of this Department, that, in compliance with the recommendation contained in your letter of 6th July last, my predecessor, on the 7th of the same month, extended the time in which said Company
207 were required to file a map of the definite location of their road to the 11th October instant.

The map referred and enclosed herewith, was received at this Department on the 24th ultimo.

The letter with map and certified copy of the Act of the Legislature, you are requested to return with your report thereon.

I am, Sir,

Very respectfully,
Your Ob't Servant,

O. H. BROWNING,

Hon. Jos. S. Wilson,
Com'r Gen. Land Office.

Endorsed on back:
S. 88384.

Hon. Sec. Interior,

Oct. 12/66.

Encloses for the information etc. of this office a letter from the Governor of Minn. covering map of the Lake Superior & Miss. R. R. etc., etc., etc.

Ex'd.
J. F. S.
C.M.B.

Department of the Interior,

General Land Office,

Nov. 2, 1866.

208 Register & Receiver,

Duluth, Minn.

Gentlemen:

Recd. Taylor's Falls, Nov. 15/66 Duluth Nov. 17/66.

Herewith is a diagram showing the line of route, as definitely located, of the Lake Superior and Mississippi Railroad, with the ten, twenty and on the West side of the thirty mile limits indicated thereon, Acts May 5, 1864 & July 13, 1866.

The odd sections within all three of these limits will be withdrawn from sale or location, premption or homestead; except in so far as valid pre-emption claims may have accrued to the same, prior to the withdrawal of May 26, 1864 within the limits therein designated, and prior to the receipt of this order outside of the limits fixed in that withdrawal.

As the Act 1864 reserves from the grant any and all lands theretofore reserved for the purpose of aiding in any object of internal improvement or for any other purpose whatsoever, no reserved lands are subject to the operation of the grant.

You will mark the line of route with the several limits on the township plats in pencil, and you will report the fact of its having been done.

The Railroad Company will be required, first to make their selections from the 10 and 20 mile limits,—if it is then found that a deficiency exists, the same can be made up by selections from the 30 mile limits.

209 This order will take effect from the date of its receipt at your office, and you will advise me of the precise time it may be received by you.

Very Respectfully,
Your Obdt. Servant,

JOS. S. WILSON,
Commissioner.

The even sections within the 10 mile limits are increased in price to $2.50 per acre and will be subject at that rate to settlement and entry under the pre-emption & homestead laws; but no such sections can be entered at private sale until they shall have first been offered at public auction.

JOS. S. WILSON,
Commissioner.

Endorsed: Complainant's Exhibit M. Filed Dec. 1, 1906. Henry D. Lang, Clerk, by E. Catherine Neff, Deputy Clerk.

210

Complainant's Exhibit N.

~~Exhibit No.~~_____

List of lands in the district of lands subject to sale at Duluth, Minnesota, outside of the ten and within the twenty mile limits of the reserve to satisfy the grant made to the State of Minnesota, by the Act of Congress approved May 5th, 1864, being "An Act granting public lands in alternate sections to the State of Minnesota to aid in the construction of Lake Superior and Mississippi Railroad, being the lands selected by the agent of the Governor of the State of Minnesota, from the lands of the United States in alternate sections and parts of sections designated by odd numbers, nearest to the tiers of sections within ten sections in width on each side of the railroad "from the City of St. Paul to the head of Lake Superior," and in lieu of the lands in the alternate sections designated by odd numbers, within said ten sections in width which the United States had legally "sold or otherwise appropriated, or to which the rights of preemption have attached."

INDEMNITY LIST NO. 2.

Approved March 25th, 1868.

Copy sent to Governor May 27, 1868.

Copy sent to local office May 27 1868.

Approval noted on tract books May 29, 1868.

North of base line and west of Fourth Principal Meridian, Lake Superior and Mississippi between ten and twenty-mile limits, Duluth District.

RAILROAD LIST.

No.	Parts of Sections.	Sec.	Tp.	R.	Acres.
2	W. ½,	7	46	15	268.89

211

W. ½,	19	"	"	264.81
E. ½ N. W. ¼,	31	"	"	80.
N.W. ¼ N. W. ¼,	"	"	"	24.94
E. ½ S. W. ¼,	"	"	"	80.
S. W. ¼ S. W. ¼,	"	"	"	22.53
W. ½,	"	47	"	270.08
W. ½,	7	51	"	320.72
~~No. Parts of Sections~~	~~Sec.~~	~~Tp.~~	~~R.~~	~~Acres.~~
W. ½ S. E. ¼,	7	51	15	80.
E. ½,	17	"	"	320.
S. E. ¼ N. W. ¼,	"	"	"	40.
E. ½ S. W. ¼,	"	"	"	80.
S. W. ¼ S. W. ¼,	"	"	"	40.
N. E. ¼ N. E. ¼,	19	"	"	40.
S. ½ N. E. ¼,	"	"	"	80.
N. W. ¼,	"	"	"	159.99
N. E. ¼ S. W. ¼,	"	"	"	40.
W. ½ S. W. ¼,	"	"	"	81.80
S. E. ¼,	"	"	"	160.
W. ½ N. E. ¼,	21	"	"	80.
N. W. ¼,	"	"	"	160.
W. ½ S. W. ¼,	"	"	"	80.
W. ½ N. E. ¼,	29	"	"	80.
N. W. ¼,	"	"	"	160.
W. ½ S. W. ¼,	"	"	"	80.
Lots 2, 3, and 4,	31	"	"	139.52
S. E. ¼ N. W. ¼,	31	"	"	40.
N. ½ S. W. ¼,	"	"	"	81.50
All	1	46	16	640.97
All	11	"	"	640.
E. ½,	13	"	"	320.
N. ½ N. W. ¼,	"	"	"	80.
S. E. ¼ N. W. ¼,	"	"	"	40.
E. ½ S. W. ¼,	"	"	"	80.
S. W. ¼ S. W. ¼,	"	"	"	40.
All	15	"	"	640.
N. ½ S. E. ¼,	19	"	"	80.
All	21	"	"	640.
All	23	"	"	640.
All	25	"	"	640.
All	27	"	"	640.

212

All	29	46	16	640.
All	31	"	"	595.51
N. ½,	33	"	"	320.
N. E. ¼ S. W. ¼,	"	"	"	40.
S. ½ S. W. ¼,	"	"	"	80.
N. W. ¼ S. E. ¼,	"	"	"	40.
S. ½ S. E. ¼,	"	"	"	80.
N. ½,	35	"	"	320.
S. W. ¼,	"	"	"	160.
N. ½ S. E. ¼,	"	"	"	80.
S. ½,	25	46	17	320.
E. ½ N. E. ¼,	35	"	"	80.
S. E. ¼,	"	"	"	145.75
Total number of acres,				11,377.01

I, Joseph S. Wilson, commissioner of the General Land Office, do hereby certify that the foregoing is a true and correct list of the tracts of lands selected by the agent of the State of Minnesota, outside of the ten and within the twenty mile limits under the Act of Congress approved May 5th, 1864, entitled "An Act making a grant of lands to the State of Minnesota to aid in the construction of the railroad from Saint Paul to Lake Superior," and the Act amendatory thereof approved July 13, 1866, the said selections being from the lands of the United States in the alternate sections designated by odd numbers, most continguous to the tier of sections within ten sections in width on each side of road "from the City of Saint Paul to the head of Lake Superior," and being in lieu of the land in the alternate sections designated by odd numbers within said ten sections in width on each side of said road, which the United States had legally sold, or to which the right of pre-emption

213

had legally attached prior to the period at which the rights of the state inured under said grant, and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said Acts of May 5th, 1864, and July 13, 1866, subject to all its conditions and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In Testimony Whereof, I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed at the City of Washington, on the day and year first herein above written.

(Seal) JOSEPH S. WILSON,
Commissioner.

Department of the Interior,
Washington City, March 25th, 1868.

Approved, subject to the conditions and rights above mentioned.

O. H. BROWNING,
Secretary.

DEPARTMENT OF THE INTERIOR,
General Land Office,
Washington, D. C., Oct. 25, 1905.

I hereby certify that the annexed copy of List No. 2 of lands approved for the Lake Superior & Mississippi Railroad Company March 25, 1868, is a true and literal exemplification from the original on file in this office.

In Testimony Whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the City of Washington, on the day and year above written.

(Seal) J. H. FIMPLE,
Acting Commissioner of the General Land Office

Endorsed: Filed Dec. 1st, 1906. Henry D. Lang, Clerk. By E. Catherine Neff, Deputy Clerk.

214 Complainant's Exhibit "O".

"F" 4—207. S. S. M.

Department of the Interior.
General Land Office.

F. C. L.

Washington, D. C., May 19, 1906.

I hereby certify that the annexed copy is a true and literal exemplification of the original on file in this office.

[Seal U. S. General Land Office.] In Testimony Whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

W. A. RICHARDS,
Commissioner of the General Land Office.

215 Ex'd. C. M. B. J. F. S.

Department of the Interior General Land Office.

October 14, 1905.

Whereas, by the Act of Congress, approved July 2, 1864, entitled "An Act granting lands to aid in the construction of a Railroad and Telegraph Line from Lake Superior to Puget's Sound on the Pacific Coast by the Northern Route", and the Joint Resolution of May 31, 1870, there was granted to the Northern Pacific Railroad Company its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line, and branch to the Pacific Coast "every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, as said company may adopt through the territories of the United States and ten alternate sections of land per mile on each side of said railroad, whenever it passes through any State, and whenever on the line thereof, the United States have full title not reserved, sold, granted, or otherwise appropriated, and free from pre-emption, or other claims or rights, at the time the line of said road is definitely fixed, and a plat thereof filed in the office of the Commissioner of the General Land Office"; and

Whereas, it is further provided that "whenever prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers or pre-empted, or otherwise disposed of, other lands shall be selected

by said company in lieu thereof, under the direction of
216 the Secretary of the Interior, in alternate sections,
and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections; and

Whereas by said Joint Resolution of May 31, 1870, it is further provided that, "in the event of there not being in any State or Territory in which said main line or branch may be located at the time of the final location thereof, the amount of lands per mile granted by Congress to said company within the limits prescribed by its charter, then said company shall be entitled, under the direction of the Secretary of the Interior, to receive so many sections of land belonging to the United States, and designated by odd numbers, within ten miles on each side of said road, beyond the limits prescribed in said charter, as will make up such deficiency on said main line, or branch, except mineral and other lands as excepted in the charter of said company of eighteen hundred and sixty-four, to the amount of lands that have been granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of subsequent to the passage of the Act of July two, eighteen hundred and sixty-four; and

Whereas, official statements from the Secretary of the Interior have been filed in the General Land Office, showing that the Commissioners appointed by the President, under the provisions of the fourth section of the first named Act, have reported to him that the said Northern Pacific Railroad and Telegraph Line and Branch excepting that portion between Wallula, Washington and Portland, Oregon, declared forfeited by the Act of September 29, 1890, have been constructed and fully completed and equipped in the manner prescribed by the Act relative thereto, and the same accepted; and

217 Whereas there has been filed in the office of the Secretary of the Interior, evidence showing that the Northern Pacific Railway Company is the lawful successor in interest of the Northern Pacific Railroad Company, as to all lands within the limits of the grant made to the said Northern Pacific Railroad Company, by the Act of July 2, 1864, and all subsequent legislation; and

Whereas a certain tract of land has been selected, under the Acts aforesaid, by the duly authorized agent of said Northern Pacific Railroad Company, now Northern Pacific Railway Company, as shown by his original list approved by the local land officers and now on file in the General Land Office; and

Whereas said tract of land lies coterminous to the con-

structed line of road, and is particularly described as follows, to-wit:

218 North of base line and west of the 4th Principal Meridian, Minn.

Northern Pacific Railway List.

Duluth Dist. Second Indemnity.

Parts of Section	Section.	Town	Range	Acres	Parts of Section	Section	Town	Range	Acres
List	No. 15.	October 17.		1883		Minnesota			
SW¼SE¼	7	N. 54	W. 14	40.00	NW¼NE¼	11	N. 46	W. 4th 16	P. M. 40.00

Railroad Division, Oct. 10, 1905.

We hereby certify that we have examined the foregoing list in connection with the plats and records of this office, and have found the tract therein described is vacant, unappropriated land outside of the thirty (30) mile and within the forty (40) mile limits of the grant made to aid in the construction of the Northern Pacific Railroad, now Northern Pacific Railway, and subject to selection, that the tract designated as basis for said selection was disposed of, or otherwise appropriated by the United States subsequent to the date of the granting act, and prior to the definite location of the road, and has not been used as a basis for other approved selections.

Approved:

W. J. DRUMMOND,
F. C. LORD,

S. S. Marr,
Chief of Division. Examiners.

219 Mineral Division, October 10, 1905.

This certifies that under Sec. 2345 U. S. Rev. Stats. the U. S. Mining laws do not apply to public lands in the State of Minnesota, and that the selection of land herein was made prior to the Saline Act of January 31, 1901.

C. A. HOLLINGSWORTH,
Examiner.

Approved:
H. G. Potter,
Chief of Division.

General Land Office, Division of Swamp Lands.

Washington, D. C., October 11, 1905.

This certifies that the foregoing list, List No. 57, Northern Pacific Railway lands, embracing 40.00 acres, has been care-

fully examined in connection with the swamp land records of this office, and that the same has been found to be free from conflict.

E. H. HUNTER,
Examiner.

Aproved:
Edmond Mallet,
Chief of Division.

Accounts Division.

General Land Office Oct. 12, 1905.

Expense of Survey and office work on lands described in the foregoing list.

Railroad Selections		40.00 acres
Field work,	$1.34	
Office work at 0075 per acre,	.30	
	$1.64	

A. B. WHITE,
Chief of Division.

220 Now, therefore, as it has been found on a careful examination in connection with the authenticated map on file in the General Land Office of the survey of the Northern Pacific Railroad route, that the foregoing land falls within the forty mile lateral limits of said route, and that the said land, so far as the returns to the General Land Office show, is free from conflict, it is hereby recommended that the described tract covering forty acres be approved and carried into patent, as land falling within the grant by the Acts aforesaid and inuring to the said Northern Pacific Railway Company, as successor in interest to the Northern Pacific Railroad Company.

W. A. RICHARDS,
Commissioner, S. S. M.

To the Honorable the Secretary of the Interior.

J.I.P.

Department of the Interior,

Washington, D. C., October 17, 1905.

Approved: covering forty acres.

E. A. HITCHCOCK,
Secretary of the Interior.

Endorsed: Complainant's Exhibit "O". Filed Dec. 1st, 1906. Henry D. Lang, Clerk. By E. Catherine Neff, Deputy Clerk.

221 Complainant's Exhibit P.

Introduced in evidence at page 148, of this Record.

No. 14812. Receiver's Office at Duluth, Minn.,

December, 10, 1898.

Received from Richard B. Jones of St. Louis County, Minn., the sum of One Hundred Dollars and——cents; being in full for the SW 1/4 of SE 1/4 quarter Section No. 7, in Township No. 54, N. of Range No. 14 W. 4th. P. M., containing forty acres and —— hundredths, at $2.50 per acre.

$100.00. J. M. SMITH, Receiver.

$.65c testimony fee received Number of written words, 433. Rate per 100 words, 15 cents March 22, 1898.

Endorsed on face in black ink: $10.00 for T. & S. No. 3377, Dec. 17, 1897.

Endorsed on face in red ink: This receipt is issued under the order of the Secretary of the Interior, dated Feb. 28, 1898, subject to any right the Northern Pacific Railroad Company may have to the lands herein described.

Endorsed on back in red ink: 50298: Office of Register of Deeds, State of Minnesota, County of St. Louis: I hereby certify that the within Instrument was filed in this office for record Oct. 3, 1902, at 10:45 A. M., and was duly recorded in Book D of L. O. R. page 281. A Lofgren, Register of Deeds, by Thos. Clark, Deputy.

Endorsed: Complainant's Exhibit P. Filed Dec. 1, 1906. Henry D. Lang, Clerk, by E. Catherine Neff, Deputy Clerk.

222 Complainant's Exhibit Q.

This indenture, Made this 19th day of December, in the year of our Lord one thousand eight hundred and ninety eight between Richard B. Jones and Anna Jones, wife of said Richard B. Jones of Duluth and of the County of St. Louis and State of Minnesota parties of the first part and Minnie Stewart of Duluth and of the County of St. Louis and State of Minnesota party of the second part

Witnesseth, That the said parties of the first part, for and in consideration of the sum of ($250.00), Two Hundred and Fifty Dollars, to them in hand by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents Grant, Bargain, sell, Remise, Release and Convey unto the said party of the second part and to her heirs and assigns

forever, all the following described lot, piece, or parcel of land situate in the County of St. Louis and State of Minnesota, and known and described as follows, to-wit:

The South West Quarter of the South East Quarter (SW 1/4 of SE 1/4) of Sec. Seven (7) in Town Fifty four (54) North of Range Fourteen (14) West 4th P. M., containing forty acres according to the government survey thereof.

To have and to hold the same, Together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining, to the said party of the second part her heirs and assigns, Forever, And the said Richard B. Jones and Anna Jones parties of the first part, for their heirs, executors and administrators, do covenant with the said party of the second part, her heirs and assigns, that they
223 have not made, done, executed or suffered any act or thing whatsoever, whereby the above described premises or any part thereof now or at any time hereafter shall be imperiled, charged or incumbered in any manner whatsoever; and the title to the above granted premises against all persons lawfully claiming the same from, through or under them the said parties of the first part will Forever Warrant and Defend.

In Testimony Whereof, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

[Seal] RICHARD B. JONES,
[Seal] ANNA JONES,

Signed, sealed and delivered
in the presence of
W. H. Smallwood,
E. B. Trenttage.

(Five 10-cent I. R. Stamps duly cancelled).

State of Minnesota,
County of St. Louis—ss.

On this 19th day of December, A. D. 1898, before me, a Notary Public, within and for said County personally appeared Richard B. Jones and Anna Jones, his wife, to me known to be the person described in, and who executed the foregoing and within instrument, and acknowledged that they executed the same as their free act and deed.

W. H. SMALLWOOD,
[Notarial Seal] Notary Public, St. Louis County, Minn.

Endorsements on back: T. B. P. Taxes for the year 1901

on the lands described within paid. L. H. Whipple, County Treasurer, by G. J. M., Asst. Deputy.

Taxes paid and transfer entered this 15th day of Aug. A. D. 1902. O. Halden, County Auditor, By C. S. Raksy.

50299. Office of Register of Deeds, St. Louis County, Minn. I hereby certify that the within Instrument was filed in this office for record on the 3rd day of Oct. A. D. 1902, at 10.45 o'clock A. M. and was duly recorded in Book 195 of Deeds, on page 453. A. Lofgren Register of Deeds, by Thos. Clark, Deputy.

Endorsed: Complainant's Exhibit Q. Filed Dec. 1, 1906. Henry D. Lang, Clerk, by E. Catherine Neff, Deputy Clerk.

224 Complainant's Exhibit R.

This Indenture, Made this 22nd day of March, in the year of our Lord one thousand nine hundred and two between Minnie Stewart and Moses Stewart her husband of the County of St. Louis and State of Minnesota parties of the first part, and Herbert H. Hoyt of Duluth of the County of St. Louis and State of Minnesota party of the second part.

Witnesseth, That the said parties of the first part, for and in consideration of the sum of Two Hundred ($200.00) Dollars, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents Grant, Bargain, Sell, Remise, Release and Convey unto the said party of the second part and to his heirs and assigns, forever, all the following described lot, piece, or parcel of land situate in the County of St. Louis and State of Minnesota, and known and described as follows, to-wit:

The South West quarter of the South East quarter (SW 1/4 of SE 1/4) of Sec. Seven (7) in Town Fifty four (54) North of Range Fourteen (14) West 4th containing forty acres according to the government survey thereof.

To have and to hold the same, Together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining, to the said party of the second part, his heirs and assigns, Forever, And the said Minnie Stewart and Moses Stewart her husband parties of the first part, for their heirs, executors and administrators does covenant with the said party of the second part, his heirs and assigns, that they have not made, done, executed or suffered any act or
225 thing whatsoever, whereby the above described premises or any part thereof now or at any time hereafter shall or may be imperiled charged or incumbered in any manner whatsoever; and the title to the above granted premises

against all persons lawfully claiming the same from, through or under them the said parties of the first part will Forever Warrant and Defend.

In testimony whereof, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

[Seal] MINNIE STEWART
[Seal] MOSES STEWART.

Signed, Sealed and Delivered in Presence of
W. D. Underhill,
E. H. Stewart.

State of Minnesota,
County of St. Louis – ss.

On this day of March A. D. 1902, before me, a Notary Public within and for said County, personally appeared Minnie Stewart and Moses Stewart her husband to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

W. UNDERHILL,
Notary Public, St. Louis County, Minn.

Endorsements on back: T. B. P. Taxes for the year 1901 on the lands described within paid. L. H. Whipple, County Treasurer, by G. J. M., Asst. Deputy.

50299. Office of Register of Deeds, County of St. Louis, Minn. I hereby certify that the within Instrument was filed in this office for record on the 3rd day of Oct. A. D. 1902, at 10:45 o'clock A. M. and was duly recorded in Book 195 of Deeds, on page 254. A. Lofgren, Register of Deeds, by Thos. Clark, Deputy.

Taxes paid and transfer entered this 15th day of Aug. 1902. O. Halden, County Auditor, by C. S. Raksy.

Endorsed: Complainant's Exhibit R. Filed Dec. 1st, 1906. Henry D. Lang, Clerk, by E. Catherine Neff, Deputy Clerk.

Complainant's Exhibit T.

226

Extract.
From the
Journal of the Senate of the United States.

54th Congress, 1st Session. April 8, 1896, Pages 228—229.

Introduction of Bills and Joint Resolutions.

Mr. Michell, of Oregon, introduced a joint resolution (S. R.

124) to facilitate the reorganization of the Northern Pacific Railroad Company; to secure actual settlers the right to purchase at a price not exceeding $2.50 per acre the agricultural lands within its grant, and to prohibit said company or any successor company from giving by consolidation, sale, or other corporate action control of its railroad to any corporation, company, person or association of persons owning, operating, or controlling a parallel or competing railroad; which was read the first and second times by unanimous consent and referred to the Committee on the Judiciary.

Reports of Committees.

April 21, 1896,
Page 253.

Mr. Mitchell, of Oregon, from the Committee on the Judiciary, to whom was referred the joint resolution (S. R. 124) to facilitate the reorganization of the Northern Pacific Railroad Company, to secure to actual settlers the right to purchase
227 at a price not exceeding $2.50 per acre the agricultural lands within its grant, and to prohibit said company or any successor company from giving by consolidation, sale, or other corporate action, control of its railroad to any corporation, company, person, or association of persons owning operating, or controlling a parallel or competing railroad, reported it with amendments and submitted a report (No. 776) thereon.

I, Charles G. Bennett, Secretary of the United States Senate, do hereby certify that the above typewritten paper is a true and authentic copy of extracts from the Journal of the United States Senate for the First Session of the Fifty-fourth Congress relating to Senate Joint Resolution No. 124.

Given under my hand and the seal of the United States Senate this eleventh day of August, A. D. 1906.

[Seal] CHARLES G. BENNETT, Secretary.

Congressional Record—Senate.

54th Congress,
2d Session.

January 23, 1897,
Page 1099.

Order of Business.

The Vice-President (at 12 o'clock and 15 minutes p. m.). The morning business is closed.

Mr. Platt. I suggest that we might go on with the order, although the hour of half past 12 has not been reached.

The Vice-President. Is there objection? The chair hears
228 none, and the Calendar under Rule VIII is in order. The first case will be announced.

Northern Pacific Railroad Company.

The joint resolution (S. R. 124) to facilitate the reorganization of the Northern Pacific Railroad Company, to secure to actual settlers the right to purchase at a price not exceeding $2.50 per acre the agricultural lands within its grant, and to prohibit said company, or any successor company from giving, by consolidation, sale, or other corporate action, control of its railroad to any corporation, company, person, or association of persons owning, operating, or controlling a parallel or competing railroad, was announced as next in order.

Mr. Gorman. Let the joint resolution go over.

The Presiding Officer. Objection being made, the joint resolution will go over.

I, Charles G. Bennett, Secretary of U. S. Senate, do hereby certify that the foregoing typewritten paper is a correct and authentic copy of extracts from the Congressional Record for the Second Session of the Fifty-fourth Congress relating to the consideration in the United States Senate of the joint resolution S. R. 124.

Given under my hand and the seal of the United States Senate this thirteenth day of August, A. D., Nineteen hundred and six.

[Seal] CHARLES G. BENNETT, Secretary.

Endorsed: Complainant's Exhibit T. Filed Dec. 1st, 1906. Henry D. Lang, Clerk, by E. Catherine Neff, Deputy Clerk.

229 Defendant's Exhibits.

Defendant's Exhibit No. 7.

Circuit Court of the United States—Eighth Judicial Circuit—District of Minnesota, Third Division.

The Farmer's Loan and Trust Company, Complainant,

vs.

Northern Pacific Railroad Company, Phillip B. Winston, George R. Sheldon, William S. P. Prentice, William C. Sheldon, Jr., surviving partners of the firm of William C. Sheldon & Co., et al., Defendants.

May 5, 1899.

This cause coming on to be heard on this day, upon all the records and proceedings herein, and upon the petition of Edwin H. McHenry and Frank G. Bigelow, receivers herein, filed on this day; and it appearing that an order has been entered in a certain proceeding between the same parties in the Circuit

Court of the United States for the Eastern District of Wisconsin, to which this proceeding is ancillary, in the following form, namely:

Circuit Court of the United States, Eastern District of Wisconsin.

230 The Farmers' Loan and Trust Company, Complainant,

against

Northern Pacific Railroad Company, Phillip B. Winston, George R. Sheldon, William S. P. Prentice and William C. Sheldon, Jr., surviving partners of the firm of William C. Sheldon & Co., et al., Defendants.

April 27th, 1899.

This cause coming on this day to be heard upon all the record and proceedings herein, and upon the petition of Edwin H. McHenry and Frank G. Bigelow, the Receivers herein, filed on September 25, 1897, and no one opposing, it is thereupon

Ordered that the prayer of said petition be and the same hereby is granted, and that all the lands granted by Congress to aid in construction and equipment of the railroads of the defendant, the Northern Pacific Railroad Company, and all rights of said defendant under the several land grants made to it by Congress in any such lands lying within the State of Minnesota and State of North Dakota east of the Missouri River, shall be sold at public sale to the highest bidders, in the following manner:

I. Such sale shall be made by Alfred L. Cary, Esq., hereby appointed Special Master for that purpose.

II. All of said lands for which letters patent have been issued to said defendant, the Northern Pacific Railroad Company, and the right to receive lands for which letters patent have not issued, but which have been selected by and certified to said company, shall be sold in single sections or subdivisions thereof at the following places:

(a) All of said lands which lie within the State of North Dakota shall be sold at the United States government building in the City of Fargo, in Cass County in said State.

231 (b) All of said lands which lie within the State of Minnesota shall be sold at the United States government building in the City of St. Paul, in Ramsey County in said State.

III. All lands for which patents have not issued, and which

have not been selected and certified to said company, but to which said Northern Pacific Railroad Company is entitled under said grants of Congress, and all rights of said Northern Pacific Railroad Company to receive from the United States any lands which have not been certified or patented to said railroad company, whether under grant expressed in the Act of Congress of July, 1864, or under any subsequent grant, by way of indemnity or otherwise, to said company, together with all the right, title, interest and claim in or to any such lands, and all its rights to receive from the United States patents therefor; and also all right, title, interest and equity in and to any other lands to which said Northern Pacific Railroad Company may be entitled, and which may have accrued or shall hereafter accrue to it under any of said land grants; and also all right, title, equity and interest in and to any lands covered by or included in any of said land grants and not hereinbefore specified, shall be sold as follows:

(a) As to all of such lands and rights in respect of lands situated within the State of North Dakota, such sale shall be made in one parcel at the United States government building, in Fargo in said State.

(b) As to all such lands, and rights in respect of lands situated within the State of Minnesota, such sale shall be made in one parcel at the United States government building in St. Paul in said State.

IV. Such sales shall respectively be made upon a
232 day or days to be fixed by said Special Master and notice of the time and place of sale, describing briefly the property and rights to be sold, and referring to this order, shall be published as follows:

(a) Sixty days' previous notice of the time and place of the sale of the patented lands and of the said unpatented lands and rights to lands within the State of North Dakota, shall be given by the Special Master by publishing the same once at least sixty days preceding the day of sale, and also at least once in each week, beginning on any day of the week, for the term of six successive weeks preceding the day of sale, in a newspaper of general circulation published in each of the following places in North Dakota, to-wit:
Fargo and Bismark.

(b) Sixty days' previous notice of the time and place of sale of the patented lands and of the said unpatented lands and rights to lands within the State of Minnesota, shall be given by the Special Master by publishing the same once at least sixty days preceding the day of sale, and also at least once in each

week beginning on any day of the week, for the term of six successive weeks preceding the day of sale, in a newspaper of general circulation published in each of the following places in the State of Minnesota, to-wit:

St. Paul, Duluth, Brainerd and Moorehead.

The Special Master may adjourn or postpone, by public announcement, said sales or any of them as to any property to be sold thereat; and without any further notice may proceed with such sale or sales on any day to which the same may be adjourned.

V. The Special Master shall receive no bid from any one offering to bid for said patented lands, or lands selected and certified but not patented, who shall not first deposit with him, as a pledge that he will make good his bid in case of acceptance, the sum of ten dollars for each section of such
233 lands for which such bidder desires to bid, in money or by a certified check upon any national bank or trust company in the City of New York or in the City of St. Paul, Minnesota.

Upon the acceptance of any bid for any of said patented land, or lands, selected and certified but not patented, the person to whom the same shall have been struck off shall deposit with the Special Master ten per cent of the total amount of his bid for such lands, either in cash or in a certified check upon any national bank or trust company in the City of New York, or in the City of St. Paul, Minnesota.

VI. The Special Master shall receive no bid from any one offering to bid for said unpatented lands and rights who shall not first deposit with him, as a pledge that he will make good his bid in case of acceptance, a sum equal to five per cent of the amount of his bid, in money or in a certified check upon a national bank or trust company in the City of New York or in the City of St. Paul, Minnesota.

Upon the acceptance of any bid for said unpatented lands and rights, the bidder shall forthwith deposit with said Special Master a sum equal to ten per cent of the amount of his bid, in money or in a certified check on any national bank or trust company in the City of New York or in the City of St. Paul, Minnesota.

VII. Upon the confirmation of any sale by the Court, the purchaser shall make such further payment or payments in cash on account of his bid as the Court may from time to time direct. The purchaser of any parcel may satisfy and make good any part of his bid not required to be paid in cash, by execut-

ing and delivering to the said Master an assignment of any claim against said Northern Pacific Railroad Company which shall have been, at the time of such assignment, finally allowed by the Court in this suit and of which such
234 purchaser shall then be the owner; and such purchaser shall be credited therefor, on account of his bid, with such sums as would be payable on such claims out of the purchase price of all the lands if the whole amount thereof had been paid in cash. If the credit to which the owner of any claim so assigned would be entitled by reason thereof shall exceed the amount due from him upon such bid in excess of the amount required to be paid in cash, then such assignment to said Master may be of such amount out of the total of the said claim as may be necessary to make up the amount so due on such bid or bids; and the right of such purchaser in respect of the balance due on such claim or claims shall not be affected thereby.

All such assignments shall be filed in the office of the Clerk of this Court by said Master, with his report, and shall, if the said report and sales be confirmed, operate to extinguish wholly or pro tanto, as the case may be, the claim or claims of such purchaser so assigned.

VIII. All sums of money received by the Special Master shall forthwith be deposited with the Clerk of this Court subject to the order of this Court.

In case any bidder for any of said parcels shall fail to make the deposit required therefor, the lands or rights struck off to him shall then and there be offered for sale without further notice or advertisement.

Any cash which any successful bidder may previously have deposited as a pledge that he would make good his bid, shall be received on account of the amount required to be paid by him on the acceptance of his bid.

By the Court,

JAS. C. JENKINS,
Circuit Judge.

And all the parties to this action appearing and con-
235 senting thereto, and no reason appearing to the Court why said petition should not be granted,

It Is Thereupon Ordered that the said order of the Circuit Court of the United States for the Eastern District of Wisconsin, entered on the 27th day of April, 1899, be and the same is hereby adopted and in all things made the order of this court herein.

WALTER H. SANBORN,
Circuit Judge.

St. Paul, May 5, 1899.

Endorsed: Defendant's Exhibit No. 7. Filed Dec. 1, 1906. Henry D. Lang, Clerk, by E. Catherine Neff, Deputy Clerk.

236 Defendant's Exhibit No. 8.

Circuit Court of the United States.

District of Minnesota, Third Division.

The Farmers' Loan and Trust Company, Complainant,

vs.

Northern Pacific Railroad Company, Phillip B. Winston, George R. Sheldon, William S. P. Prentice, William C. Sheldon, Jr., surviving partners of the firm of William C. Sheldon & Co., Defendants.

June 5, 1899.

This cause coming on to be heard on this day upon all the records and proceedings herein, and upon the petition of Edwin H. McHenry and Frank G. Bigelow, receivers herein, filed on this day: and it appearing that an order has been entered in a certain proceeding between the same parties in the Circuit Court of the United States for the Eastern District of Wisconsin, to which this proceeding is ancillary, in the following, form, namely:

United States Circuit Court,
Eastern District of Wisconsin.

The Farmers' Loan and Trust Company, Complainant,

vs.

237 Northern Pacific Railroad Company, et al., Defendants.

May 25, 1899.

The decree entered herein and dated April 27, 1899, authorizing sale of lands east of Missouri River in Minnesota and North Dakota, is hereby vacated and set aside.

Enter. J. G. J. By the Court.

Circuit Court of the United States, Eastern District of Wisconsin.

The Farmer's Loan and Trust Company, Complainant,

vs.

Northern Pacific Railroad Company, Phillip B. Winston, George R. Sheldon, William S. P. Prentice and William C. Sheldon, Jr., surviving partners of the firm of William C. Sheldon & Co., et al., Defendants.

May 25th, 1899.

This cause coming on this day to be heard upon all the record and proceedings herein, and upon the petition of Edwin H. McHenry and Frank G. Bigelow, the Receivers herein, filed on September 25, 1897, and no one opposing, it is thereupon

Ordered and decreed that the prayer of said petition be and the same is granted, and that all the lands granted by Congress to aid in construction and equipment of the railroads of the defendant, the Northern Pacific Railroad Company, and all rights of said defendant under the several land grants made
238 to it by Congress in any such lands lying within the the State of Minnesota and State of North Dakota east of the Misouri River, shall be sold at public sale to the highest bidders, in the following manner:

I. Such sale shall be made by Alfred L. Cary, Esq., hereby appointed Special Master for that purpose who is hereby required to report to the Court his doings hereunder.

II. All of the said lands for which letters patent have issued to said defendant Northern Pacific Railroad Company, and the right to receive lands for which letters patent have not issued, but which have been selected by and certified to said company, shall be sold in single sections, or subdivisions thereof, and all lands for which patents have not issued, and which have not been selected by and certified to said company, but to which said Northern Pacific Railroad Company is entitled under said grants of Congress and all rights of said Northern Pacific Railroad Company to receive from the United States any lands which have not been certified or patented to said railroad company, whether under the grant expressed in the Act of Congress of July 2, 1864, or under any subsequent grant, by way of indemnity or otherwise, to said company, together with all the right, title, interest and claim in or to any such lands, and all its rights to receive from the United States patents therefor; and also all right, title, interest and equity in and to any other lands to which said Northern Pacific Railroad Company may be entitled, and which may have [accured] or shall hereafter [accure] to it under any of said land grants; and also all right, title, equity and interest in and to any lands covered by or included in any of said land grants and not hereinbefore specified, shall be sold in one parcel as to such lands and rights in each county, at the following places:

239 (a) Minnesota:

1. All of said lands and rights to lands within the County of Pine, in the State of Minnesota, shall be sold at the court house of said county at Pine City.

2. All of said lands and rights to lands within the County of St. Louis, in the State of Minnesota, shall be sold at the court house of said county at Duluth.

3. All of said lands and rights to lands within the County of Lake, in the State of Minnesota, shall be sold at the court house of said county at Two Harbors.

4. All of said lands and rights to lands within the County of Itasca, in the State of Minnesota, shall be sold at the court house of said county at Grand Rapids.

5. All of said lands and rights to lands within the County of Beltrami, in the State of Minnesota, shall be sold at the court house of said county at Bemidji.

6. All of said lands and rights to lands within the County of Cass, in the State of Minnesota, shall be sold at the court house of said county at Walker.

7. All of said lands and rights to lands within the County of Hubbard, in the State of Minnesota, shall be sold at the court house of said county at Park Rapids.

8. All of said lands and rights to lands within the County of Wadena, in the State of Minnesota, shall be sold at the court house of said county at Wadena.

9. All of said lands and rights to lands within the County of Todd, in the State of Minnesota, shall be sold at the court house of said county at Long Prairie.

240 10. All of said lands and rights to lands within the County of Douglas, in the State of Minnesota, shall be sold at the court house of said county at Alexandria.

11. All of said lands and rights to lands within the County of Grant, in the State of Minnesota, shall be sold at the court house of said county at Elbow Lake.

12. All of said lands and rights to lands within the County of Otter Tail, in the State of Minnesota, shall be sold at the court house of said county at Fergus Falls.

13. All of said lands and rights to lands within the County of Wilkin, in the State of Minnesota, shall be sold at the court house of said county at Breckinbridge.

14. All of said lands and rights to lands within the County of Clay, in the State of Minnesota, shall be sold at the court house of said county at Moorhead.

15. All of said lands and rights to lands within the County

of Norman, in the State of Minnesota, shall be sold at the court house of said county at Ada.

16. All of said lands and rights to lands within the county of Becker, in the State of Minnesota, shall be sold at the court house of said county at Detroit.

17. All of said lands and rights to lands within the County of Crow Wing, in the State of Minnesota, shall be sold at the court house of said county at Brainerd.

18. All of said lands and rights to lands within the county of Aitkin, in the State of Minnesota, shall be sold at the court house of said county at Aitkin.

19. All of said lands and rights to lands within the County of Morrison, in the State of Minnesota, shall be sold at
241 the court house of said county at Little Falls.

20. All of said lands and rights to lands within the County of Mills Lacs, in the State of Minnesota, shall be sold at the court house of said county at Princeton.

21. All of said lands and rights to lands within the County of Carlton, in the State of Minnesota, shall be sold at the court house of said county at Carlton.

(b) North Dakota:

1. All of said lands and rights to lands within the County of Dickey, in the State of North Dakota, shall be sold at the court house of said county, at Ellendale.

2. All of said lands and rights to lands within the County of Richland, in the State of North Dakota, shall be sold at the court house of said county at Wahpeton.

3. All of said lands and rights to lands within the County of Traill, in the State of North Dakota, shall be sold at the court house of said county at Hillsboro.

4. All of said lands and rights to lands within the County of Cass, in the State of North Dakota, shall be sold at the court house of said county at Fargo.

5. All of said lands and rights within the County of Ransom, in the State of North Dakota, shall be sold at the court house of said county at Lisbon.

6. All of said lands and rights to lands within the County of La Moure, in the State of North Dakota, shall be sold at the court house of said county at La Moure.

7. All of said lands and rights to lands within the County

of Steele, in the State of North Dakota, shall be sold at the court house of said county at Sherbrooke.

242 8. All of said lands and rights to lands within the County of Barnes, in the State of North Dakota, shall be sold at the court house of said county at Valley City.

9. All of said lands and rights to lands within the County of Griggs, in the State of North Dakota, shall be sold at the court house of said county at Cooperstown.

10. All of said lands and rights to lands within the County of Stutsman, in the State of North Dakota, shall be sold at the court house of said county at Jamestown.

11. All of said lands and rights to lands within the County of Foster, in the State of North Dakota, shall be sold at the court house of said county at Carrington.

12. All of said lands and rights to lands within the County of Wells, in the State of North Dakota, shall be sold at the court house of said county at Fessenden.

13. All of said lands and rights to lands within the County of Eddy, in the State of North Dakota, shall be sold at the court house of said county at New Rockford.

14. All of said lands and rights to lands within the County of Kidder, in the State of North Dakota, shall be sold at the court house of said county at Steele.

15. All of said lands and rights to lands within the County of Burleigh, in the State of North Dakota, shall be sold at the court house of said county at Bismarck.

16. All of said lands and rights to lands within the County of McLean, in the State of North Dakota, shall be sold at the court house of said county at Washburn.

17. All of said lands and rights to lands within the County of Sargent, in the State of North Dakota, shall be sold at the court house of said county at Forman.

243 18. All of said lands and rights to lands within the County of Logan, in the State of North Dakota, shall be sold at the court house of said county at King.

19. All of said lands and rights to lands within the County of Emmons, in the State of North Dakota, shall be sold at the court house of said county at Linton.

20. All of said lands and rights to lands within the County of McIntosh in the State of North Dakota, shall be sold at the court house of said county, at Ashley.

The Receivers are hereby required to file schedules showing the lands and rights to be sold hereunder with the clerk of this Court, and with the clerks of the United States Circuit Courts for the Districts of Minnesota and North Dakota, respectively, at least thirty (30) days before the date of the first sale to be made hereunder.

III. Such sales shall, respectively, be made upon a day or days to be fixed by said Special Master, and notice of the times and places of said sales, describing the property and rights to be sold and referring to this decree, shall be published respectively once a week for at least four weeks prior to such sales, respectively, in a newspaper printed, regularly issued and having a general circulation in the county and state where said sales, respectively are to be made as hereinbefore provided.

The Special Master may adjourn or postpone, by public announcement, said sales or any of them as to any property to be sold thereat; and without any further notice may proceed with such sale or sales on any day to which the same may be adjourned.

IV. The Special Master shall receive no bid from any one offering to bid for said patented lands, or lands selected and certified but not patented, who shall not first de-
244 posit with him, as a pledge that he will make good his bid in case of acceptance, the sum of ten dollars for each section of such lands for which such bidder desires to bid, in money or by a certified check upon any national bank or trust company in the city of New York or in the City of St. Paul, Minnesota.

Upon the acceptance of any bid for any of said patented lands, or lands selected and certified but not patented, the person to whom the same shall have been struck off shall deposit with the Special Master ten per cent of the total amount of his bid for such lands, either in cash or in a certified check upon any national bank or trust company in the City of New York or in the City of St. Paul, Minnesota.

V. The Special Master shall receive no bid from any one offering to bid for said unpatented lands and rights who shall not first deposit with him, as a pledge that he will make good his bid in case of acceptance, a sum equal to five per cent of the amount of his bid, in money or in a certified check upon a national bank or trust company in the City of New York or in the City of St. Paul, Minnesota.

Upon the acceptance of any bid for said unpatented lands

and rights, the bidder shall forthwith deposit with said Special Master a sum equal to ten per cent of the amount of his bid, in money or in a certified check on any national bank or trust company in the City of New York or in the City of St. Paul, Minnesota.

VI. Upon the confirmation of any sale by the Court, the purchaser shall make such further payment or payments in cash on account of his bid as the Court may from time to time direct. The purchaser of any parcel may satisfy and make good any part of his bid not required to be paid in cash, by executing and delivering to the said Master an assignment of any claim against said Northern Pacific Railroad Company
which shall have been, at the time of such assignment,
245 finally allowed by the Court in this suit, and of
which such purchaser shall then be the owner; and such purchaser shall be credited, therefor, on account of his bid, with such sums as would be payable on such claims out of the purchase price of all the lands if the whole amount thereof had been paid in cash. If the credit to which the owner of any claim so assigned would be entitled by reason thereof shall exceed the amount due from him upon such bid in excess of the amount required to be paid in cash then such assignment to said master may be of such amount out of the total of the said claim as may be necessary to make up the amount so due on such bid or bids; and the right of such purchaser in respect of the balance due on such claim or claims shall not be affected thereby.

All such assignments shall be filed in the office of the clerk of this Court by said Master, with his report, and shall, if the said report and sales be confirmed operate to extinguish wholly or pro tanto, as the case may be, the claim or claims, of such purchaser so assigned.

VII. All sums of money received by the Special Master shall forthwith be deposited with the clerk of the Court subject to the order of this Court.

In case any bidder for any of said parcels fail to make the deposit therfor, the lands or rights struck off to him shall then and there be offered for sale without further notice or advertisement.

Any cash which any successful bidder may previously have deposited as pledge that he would make good his bid, shall be received on account of the amount required to be paid by him on the acceptance of his bid.

By the Court,

246 (Signed) JAS. G. JENKINS,
Circuit Judge.

and a certified copy of said order having been filed herein, and all the parties to this action appearing and consenting thereto and no reason appearing to the court why said petition should not be granted, it is thereupon

Ordered that the said order of the Circuit Court of the United States for the Eastern District of Wisconsin, entered on the 25th day of May, 1899, be and the same is hereby adopted and in all things made the order of this court herein.

WALTER H. SANBORN,
Circuit Judge.

Endorsed: Defendant's Exhibit No. 8. Filed Dec. 1st, 1906. Henry D. Lang, Clerk, by E. Catherine Neff, Deputy Clerk.

247 Defendant's Exhibit No. 9.

Circuit Court of the United States,
District of Minnesota.

The Farmers' Loan and Trust Company, Complainant,
vs.
Northern Pacific Railroad Company, Phillip B. Winston, George R. Sheldon, William S. P. Prentice, and William C. Sheldon, Jr., surviving partners of the firm of William C. Sheldon & Co., et al., Defendants.

To the Honorable the Judges of said Court in Equity Sitting:

May 25th, 1899, a certain decree of sale was entered in a certain cause in equity pending in the Circuit Court of the United States for The Eastern District of Wisconsin between the parties above named, the execution whereof, in certain respects, was confided to Alfred L. Cary, as Special Master, June 5th, 1899, a decree ancillary to that above mentioned was entered in a like cause between the same parties pending in each of the following Circuit Courts of the United States, viz., that for the District of Minnesota and that for the District of North Dakota. June 8th, 1899, said Circuit Court of the United States for the Eastern District of Wisconsin entered a decree in the same cause pending therein correcting its said decree of May 25th, 1899. Decrees ancillary to that last mentioned, and correcting respectively the said ancillary decrees of June 5th, 1899, were entered respectively as follows: In the said cause

248 in the Circuit Court of the United States for the District of Minnesota on the 9th day of June 1899, and in the said cause in the Circuit Court of the United States for the District of North Dakota on the 10th day of June, 1899.

Pursuant to said decrees, I, the said Special Master, do report as follows:

First. Schedules showing the lands and rights to be sold under said decrees were filed respectively as follows: With the clerk of the United States Circuit Court for the Eastern District of Wisconsin, at his office in the City of Milwaukee, in said district, on the 6th day of June, 1899: With the clerk of the United States Circuit Court for the District of Minnesota, at his office in the City of St. Paul, in said district, on the 8th day of June, 1899; and with the clerk of the United States Circuit Court for the District of North Dakota, at his office in the City of Fargo, in said district, on the 9th day of June, 1899. Said schedules so filed described the said lands and rights in the State of Minnesota as they are described in the schedules hereto annexed, numbered from "A1" to "A21" both inclusive, and the said lands and rights in the State of North Dakota, as they are described in the schedules annexed to my report of sales under said decrees to the said Circuit Court of the United States for the District of North Dakota numbered from "B1" to "B20", both inclusive.

Affidavits proving that said schedules were filed as above stated are hereto annexed and made part hereof.

Second. Schedules showing the lands and rights to be sold under said decrees within the State of Minnesota, as they are described in the schedules hereto annexed, numbered from "A1" to "A21" both inclusive, were deposited and left for public inspection prior to June 16th, 1899, in each of the following passenger stations of the Northern Pacific Railroad Company, to-wit: At St. Paul, Duluth, Brainerd and Moorehead
249 in said State of Minnesota.

Affidavits proving that said schedules were deposited and left as above stated are hereto annexed and made part hereof.

Third. Pursuant to the authority vested in me by said decrees, I fixed the times of the sales in said State of Minnesota to be made pursuant to said decrees respectively as follows:

1. The sale of lands and rights to lands within the County of Pine on the 17th day of July, 1899, at eleven o'clock A. M.

2. The sale of lands and rights to lands within the County of St. Louis, on the 17th day of July, 1899, at four o'clock P. M.

3. The sale of lands and rights to lands within the County of Lake, on the 18th day of July, 1899, at nine o'clock A. M.

4. The sale of lands and rights to lands within the County of Itasca, on the 18th day of July, 1899, at four o'clock P. M.

5. The sale of lands and rights to lands within the County of Beltrami, on the 19th day of July, 1899, at nine o'clock, A. M.

6. The sale of lands and rights to lands within the County of Cass, on the 19th day of July, 1899, at 12 o'clock noon.

7. The sale of lands and rights to lands within the County of Hubbard, on the 19th day of July, 1899, at three o'clock, P. M.

8. The sale of lands and rights to lands within the County of Wadena, on the 20th day of July, 1899, at nine o'clock A. M.

9. The sale of lands and rights to lands within the County of Todd, on the 20th day of July, 1899, at one o'clock P. M.

10. The sale of lands and rights to lands within the County of Douglas, on the 20th day of July, 1899, at five o'clock P. M.

11. The sale of lands and rights to lands within the County of Grant, on the 21st day of July, 1899, at nine o'clock A. M.

12. The sale of lands and rights to lands within the
250 County of Otter Tail, on the 21st day of July, 1899, at three o'clock P. M.

13. The sale of lands and rights to lands within the County of Wilken, on the 24th day of July, 1899, at nine o'clock A. M.

14. The sale of lands and rights to lands within the County of Clay, on the 25th day of July, 1899, at eleven o'clock A. M.

15. The sale of lands and rights to lands within the County of Norman, on the 25th day of July, 1899, at four o'clock P. M.

16. The sale of lands and rights to lands within the County of Becker, on the 4th day of August, 1899, at nine o'clock A. M.

17. The sale of lands and rights to land within the County of Crow Wing, on the 4th day of August, 1899, at two o'clock P. M.

18. The sale of lands and rights to lands within the County of Aitkin, on the 4th day of August, 1899, at four o'clock P. M.

19. The sale of lands and rights to lands within the County of Morrison, on the 5th day of August, 1899, at nine o'clock, A. M.

20. The sale of lands and rights to lands within the County of Mille Lacs, on the 5th day of August, 1899, at three o'clock P. M.

21. The sale of lands and rights to lands within the County of Carlton, on the 17th day of July, 1899, at two o'clock P. M.

St. Louis County.

Seventh. That I caused notice of the time and place of sale within the County of St. Louis in said State of Minnesota, of certain property described in said decrees, namely, all the lands within the said County of St. Louis, granted by Congress to aid in the construction and equipment of the railroads of said Northern Pacific Railroad Company, and all rights of said company under the several land grants made to it by
251 Congress, in any such lands lying within said County of St. Louis, describing the property and rights to be sold and referring to said decrees, to be published once a week for at least four weeks prior to the 17th day of July, 1899, that being the day of sale within said County of St. Louis specified in said notice, in a newspaper printed, regularly issued and having a general circulation in said County of St. Louis and State of Minnesota.

An affidavit proving the said publication of said notice and specifying the newspaper wherein such publication were made is hereto annexed and made part hereof, and attached to said affidavit is a printed copy of said notice.

That prior to the 16th day of June, 1899, I caused a schedule of the lands within said County of St. Louis, so to be sold under said decrees, to be deposited and left for public inspection in the office of the Clerk of the District Court for said county.

An affidavit proving that said schedule was deposited and left as above stated is hereto annexed and made part hereof.

Eighth. That I attended at the time and place of sale within said County of St. Louis, specified in said notice, to-wit: On the 17th day of July, 1899, at four o'clock P. M., at the Court House in Duluth, St. Louis County, in said State of Minnesota, and then and there, pursuant to said decrees, offered at public sale the lands described in Schedule "A2" hereto annexed and made part hereof, except those represented by "Item number" 390 in said schedule, which said offers of said lands were in single sections or subdivisions thereof, as represented by each "Item number", in said schedule, except said number 390.

That thereupon the person whose name appears in said schedule "A2", under the head of "Name of successful bidder and purchaser" opposite each "Item number," de-
252 posited with me the sum of ten dollars for the privilege of bidding upon the land described in said sche-

dule opposite said "Item number," and thereupon such person bid for said land the sum set opposite thereto under the head of "Amount at which struck off," and such land was struck off by me to such person for the sum so bid, he being the highest and best bidder therefor and that being the highest and best bid made for such land. That upon my acceptance of each such bid (there was a separate sale of the land represented by each "Item number" in said schedule), the said successful bidder made a further deposit with me, which, added to such preliminary deposit, made ten per cent of the amount of each of such bids, which such deposits, both "preliminary" and "second", are stated in said schedule "A2" under the heads respectively designed therefor and opposite the lands and bids with respect to which they were made. The date of sale of the land covered by each such "Item number," is shown in said schedule under the head of "Date of Master's Sale," such date being either the date specified in said notice of sale or an adjournment duly made by me therefrom. All such sales were made at the place in said St. Louis County designated in said notice of sale.

The amounts for which the lands described in said Schedule "A2" except those represented by "Item number" 390, were struck off and sold aggregate $116,700.00

The said deposits made by the successful bidders and purchasers for all such lands aggregate as follows:

Preliminary deposits $3,890.00
Second deposits $7,780.00

$11,670.00

Aggregate amount yet unpaid on such sales.....$105,030.00

Such deposits, "preliminary" and "second", were of the following character:

253 In money ..... $.....
By certified checks upon National Banks or Trust Companies in the City of St. Paul, Minnesota $11,670.00
By certified checks upon National Banks or Trust Companies in the City of New York..... $.....

That Schedule "C2", hereto annexed and made part hereof contains a list of the unsuccessful bidders who made preliminary deposits with me as such Special Master at the said sale of lands described in said Schedule "A2," showing the date and amount deposited by each, the lands as to which each deposit was made by reference to "Item number" in said Sched-

ule "A2," and the date that each such deposit was returned by me to the depositor.

Ninth. That immediately after the conclusion of the said sales of land above reported and at the same place at which such sales were made, being the place in the said County of St. Louis designated in said notice of sale, and pursuant to said decrees, I offered for sale at public auction as one parcel all the lands, property and rights particularly described in said Schedule "A2" and represented by "Item number" 390 thereof.

That thereupon the Northern Pacific Railway Company offered to and did bid for said lands, property, and rights, the sum of one thousand dollars, and with such offer and bid deposited with me fifty dollars by a certified check upon the First National Bank of St. Paul, of the City of St. Paul, Minnesota.

That no other offers to bid for the said lands, property and rights described in said Schedule "A2" and represented by said "Item number" 390 thereof, were made and no other deposits were tendered for the privilege of bidding therefor, although ample opportunity was given for such offers and tenders.

That I thereupon struck off said lands, property and
254 rights to the said Northern Pacific Railway Company, it being the only bidder, and that being the only bid therefor.

That thereupon the said Northern Pacific Railway Company upon my acceptance of its said bid for said lands, property and rights described in said Schedule "A2" and represented by said "Item number" 390 thereof, made a further deposit with me of fifty dollars by a certified check upon the First National Bank of St. Paul.

The details of said last reported sale, as above given, are contained in said Schedule "A2" oppposite to and in connection with "Item number" 390 thereof.

Sixty-sixth. That I caused notice of the time and place of each of the sales hereinbefore reported to be published once a week for at least four weeks prior to the dates fixed by me for said sales respectively as hereinbefore reported in The Daily Pioneer Press, a newspaper printed, regularly issued, and having a general circulation in the City of St. Paul, County of Ramsey, and State of Minnesota, which said notice so published referred to said decrees and described the property and rights to be sold at each of said sales.

An affidavit proving the said publications of said notice is hereto annexed and made part hereof, and attached to said affidavit is a printed copy of said notice.

Sixty-seventh: All the foregoing sales with respect to the lands heretofore contracted to be sold by the Northern Pacific Railroad Company, or by its Receivers, were made subject to the rights of the purchasers under such contracts.

All of which is respectfully submitted.

Dated, August 24th, 1899.

255 Alfred L. Cary, Special Master.

(Here follow affidavits of the Clerks of the United States Circuit Courts for Eastern District of Wisconsin, District of Minnesota, and District of North Dakota, setting forth that schedules of the lands and rights to be sold by the Special Master, pursuant to the decree of May 25, 1899, were duly filed in their respective offices, and also the other affidavits and the schedules mentioned in the foregoing report of sale.)

Recapitulation.

Counties	Payments by successful bidders.		
	Amount at which struck off	Preliminary Deposit	Second Deposit
Pine	$6000	$550	50
St. Louis	117700	3940	7830
Lake	12600	630	630
Itasca	14400	1390	50
Beltrami	2500	200	50
Cass	50100	4960	50
Hubbard	14200	1070	50
Wadena	21700	2120	50
Todd	57000	1780	3920
Douglas	13000	650	650
Grant	2750	100	175
Otter Tail	116950	5830	5865
Wilkin	18600	930	930
Clay	64000	3200	3200
Norman	63950	2280	1145
Becker	58800	2940	2940
Crow Wing	92000	4600	4600
Aitkin	98200	4910	4910
Morrison	6100	560	50
Mille Lacs	9300	880	50
Carlton	1000	50	50
Grand Totals	837850	43570	40215

Endorsed: Filed August 26, 1899. Henry D. Lang, Clerk.

Endorsed: Defendant's Exhibit No. 9. Filed Dec. 1st, 1906. Henry D. Lang, Clerk, by E. Catherine Neff, Deputy Clerk.

256

SCHEDULE A--2

LIST

of patented and selected lands of the Northern Pacific Railroad Company to be sold under the decree of sale entered on the 25th day of May, 1899, in the United States Circuit Court for the Eastern District of Wisconsin, in the cause wherein the Farmer's Loan & Trust Company is complainant, and the Northern Pacific Railroad Company and others are defendants; and a certain other decree ancillary thereto entered in a like cause pending between said parties in the United States Circuit Court for the District of Minnesota on the 5th day of June, 1899.

Lands in the State of Minnesota, County of St. Louis.

(Note—Lands affected by outstanding contracts of sale are indicated by contract number opposite thereto.)

Item Number	DESCRIPTION OF LAND	Sec.	Tp. North	R. West	Area	Numbered Contract
1	E½, NW¼ & S½ SW¼	3	52	12	568.80	
2	E½ NE¼, SW¼ NE¼, SW¼ NW¼ & N½ SE¼	5	52	12	243.17	
3	SW¼ NE¼, E½ W½, SW¼ SW¼ W½ SE¼ & SE¼ SE¼	7	52	12	360.72	
4	E½ & S½ SW¼	9	52	12	400	
5	W½ & SE¼	15	52	12	480	
6	N½, N½ SE¼ & SW¼ SE¼	17	52	12	440	
7	NW¼ NW¼	27	52	12	40	
8	SW¼	29	52	12	160	
9	NE¼	31	52	12	160	
10	N½, NE¼ SW¼ & W½ SE¼	1	53	12	439.14	
11	NW¼ NE¼, N½ NW¼, SE¼ NW¼, SE¼ SW¼ & SE¼	3	53	12	359.04	
12	S½ NE¼, NW¼ & SE¼	5	53	12	398.31	
13	S½ NE¼, N½ S½, SE¼ SW¼, & SW¼ SE¼	7	53	12	322.18	
14	E½ NE¼, W½ NW¼, NW¼ SW¼ & NW¼ SE¼	11	53	12	240	
15	E½ NE¼, SW¼ NE¼ & SE¼	13	53	12	280	
16	SE¼ SW¼ & SE¼	17	53	12	200	
17	NW¼ NE¼	21	53	12	40	
18	E½ NE¼, NW¼ NE¼ & SE¼ SW¼	23	53	12	160	
19	SE¼ SW¼, SW¼ SE¼, & E½ SE¼	25	53	12	160	
20	NW¼ NW¼ & SE¼ SW¼	27	53	12	80	
21	NE¼ SW¼	29	53	12	40	
22	SW¼ NE¼, SE¼ NW¼, SW¼ W½ SE¼ & SE¼ SE¼	31	53	12	363.99	
23	W½ NE¼, E½ NW¼, W½ SW¼, SE¼ SW¼ & SE¼	33	53	12	440	
24	SE¼ NE¼ & SE¼	35	53	12	200	
25	All, less R-W 12 acres	1	54	12	637.20	
26	Lots 2, 3, 4, 5, 7 & SW¼ NW¼	3	54	12	209.66	
27	SW¼ NW¼, NE¼ SW¼, lots 5, 7, 8 & 9	5	54	12	233.05	
28	NE¼ SW¼, Lots 3, 4, 7, 8 & 10	7	54	12	250.70	
29	NW¼ NE¼, NW¼ & NW¼ SW¼	9	54	12	240	
30	NE¼ NE¼, W½ NE¼, S½ NW¼, W½ SE¼ & SE¼ SE¼, Lots 3, 4, 5, 6	11	54	12	449.05	

257

SCHEDULE A--2

LIST

of patented and selected lands of the Northern Pacific Railroad Company to be sold under the decree of sale entered on the 25th day of May, 1899, in the United States Circuit Court for the Eastern District of Wisconsin, in the cause wherein the Farmer's Loan & Trust Company is complainant, and the Northern Pacific Railroad Company and others are defendants; and a certain other decree ancillary thereto entered in a like cause pending between said parties in the United States Circuit Court for the District of Minnesota, on the 5th day of June, 1899.

Lands in the State of Minnesota, County of St. Louis.

(Note—Lands affected by outstanding contracts of sale are indicated by contract number opposite thereto.)

Item Number	DESCRIPTION OF LAND	Sec.	Tp. N	R. W	Area	Numbered Contract
31	All	13	54	12	640	
32	E½, NW¼, NE¼ SW¼ & S½ SW¼	15	54	12	558.45	
33	All	17	54	12	612	
34	E½ NE¼, SE¼ SW¼, NE¼ SE¼ & Lots 2 & 5	19	54	12	257.20	
35	E½ NE¼, SW¼ NE¼, W½ & SE¼	21	54	12	600	
36	E½, E½ W½, NW¼ NW¼ & SW¼ SW¼	23	54	12	560	
37	All	25	54	12	640	
38	E½ & S½ SW¼	27	54	12	400	
39	E½ NE¼, NW¼ NE¼, NW¼ & NW¼ SW½	29	54	12	320	
40	N½ NW¼	31	54	12	73.65	
41	SW¼ NE¼, SE¼ NW¼, N½ SW¼, SE¼ SW¼ & SE¼	33	54	12	360	
42	NE¼, E½ NW¼, SW¼ NW¼, N½ S½ & SW¼ SE¼	35	54	12	480	
43	SE¼ SW¼ & SW¼ SE¼	5	55	12	80	
44	N½ NE¼ & NW¼	7	55	12	248.89	
45	W½ SW¼, SW¼ SE¼, Lots 5, 7 & 8	9	55	12	189.55	
45	Lot 2	9	55	12	46.90	10343
46	S½ NE¼, SE¼ NW¼, E½ SW¼, N½ SE¼ & Lot 3	11	55	12	307.50	
47	SE¼ NE¼, W½ NE¼, NW¼ NW¼, NE¼ SW¼, S½ SW¼, & SE¼	13	55	12	440	
48	SE¼ NE¼ & S½, less R-W 10 acres	15	55	12	350	
49	SE¼ SW¼, Lots 3, 6, 11, 12 & 13,	19	55	12	261.90	
50	W½, NE¼, E½ W½, NW¼ NW¼, SW¼ SW¼, N½ SE¼, SE¼ SE¼	21	55	12	440	
51	E½, NW¼, E½ SW¼ & Lot 1, less R-W 9 acres	23	55	12	598.60	
52	E½, NW¼, N½ SW¼ & SW¼ SW¼	25	55	12	600	
53	N½ NW¼, NW¼ SW¼, Lots 1, 2, 6 & 8	27	55	12	249.70	
54	E½, E½ NW¼, SW¼ NW¼ & SW¼	29	55	12	578.10	

258

SCHEDULE A--2

LIST

of patented and selected lands of the Northern Pacific Railroad Company to be sold under the decree of sale entered on the 25th day of May, 1899, in the United States Circuit Court for the Eastern District of Wisconsin, in the cause wherein the Farmer's Loan & Trust Company is complainant, and the Northern Pacific Railroad Company and others are defendants; and a certain other decree ancillary thereto entered in a like cause pending between said parties in the United States Circuit Court for the District of Minnesota on the 5th day of June, 1899.

Lands in the State of Minnesota, County of St. Louis.

(Note—Lands affected by outstanding contracts of sale are indicated by contract number opposite thereto.)

Item Number	DESCRIPTION OF LAND	Sec.	Tp.	R.	Area	Numbered Contract
55	N½ NE¼, E½ SW¼, W½ SE¼, SE¼ SE¼ & Lot 5	31	55	12	324.25	
56	SE¼ NE¼, W½ NE¼, W½ SE¼	33	55	12	548.15	
57	NW¼, N½ SW¼, SE¼ & Lot 1	35	55	12	430.60	
58	SW¼ & SW¼ SE¼	1	51	13	200	
59	SE¼	17	51	13	160	
60	N½ & W½ SW¼	21	51	13	400	
61	E½ NE¼	23	51	13	80	
62	NE¼ NE¼ & NW¼ NW¼	1	52	13	92.43	
63	NE¼ NW¼ & W½ SW¼	3	52	13	124.62	
64	NW¼ NW¼	5	52	13	42.83	
65	NE¼, E½ NW¼, SW¼ NW¼ N½ SW¼, N½ SE¼, & SE¼ SE¼	7	52	13	473.12	
66	E½ E½, SW¼ NE¼ & NW¼ SE¼	9	52	13	240	
67	NE¼ SW¼ & S½ S½	11	52	13	200	
68	NE¼, NE¼ SE¼ & S½ SE¼	13	52	13	280	
69	NE¼, S½ NW¼, SW¼, W½ SE¼ & SE¼ SE¼	15	52	13	520	
70	S½ NW¼, N½ SW¼ & SE¼ SW¼	17	52	13	200	
71	S½ NE¼, NW¼ & S½	21	52	13	560	
72	NW¼ NE¼, NW¼, N½ SW¼ & SE¼	23	52	13	440	
73	NW¼	25	52	13	160	
74	N½, N½ SW¼, SW¼ SW¼ & N½ SE¼	27	52	13	520	
75	S½ SW¼ & SE¼	33	52	13	240	
76	N½ NE¼	35	52	13	80	
77	E½ NE¼, NW¼ NE¼, W½ NW¼, SE¼ NW¼, NE¼ SW¼ & NW¼ SE¼	1	53	13	314.78	
78	Lot 4	3	53	13	33.10	
79	NE¼ SW¼	5	53	13	40	
80	S½ NW¼, NE¼ SW¼, SE¼ SE¼, Lots 2, 4, 5, 6, 7	7	53	13	351.44	
81	Lot 2	9	53	13	33.84	
82	S½ NE¼, E½ SW¼ & NW¼ SE¼	11	53	13	200	
83	SE¼ SE¼	13	53	13	40	
84	SW¼ NE¼, NW¼ SE¼ & SE¼ SE¼	25	53	13	120	
85	W½ NW¼, SE¼ NW¼ NE¼ SW¼ & SE¼ SE¼	1	54	13	201.05	

SCHEDULE A--2

259

LIST

of patented and selected lands of the Northern Pacific Railroad Company to be sold under the decree of sale entered on the 25th day of May, 1899, in the United States Circuit Court for the Eastern District of Wisconsin, in the cause wherein the Farmer's Loan & Trust Company is complainant, and the Northern Pacific Railroad Company and others are defendants; and a certain other decree ancillary thereto entered in a like cause pending between said parties in the United States Circuit Court for the District of Minnesota, on the 5th day of June, 1899.

Lands in the State of Minnesota, County of St. Louis.

(Note— Lands affected by outstanding contracts of sale are indicated by contract number opposite thereto.)

Item Number	DESCRIPTION OF LAND	Sec.	Tp. 54	R. 13 W	Area	Numbered Contract
86	S½ SW¼,	3	54	13	80	
87	SE¼ NE¼,	5	54	13	40	
88	S½ NW¼, NW¼ SW¼ & W½ SE¼,	9	54	13	200	
89	NE¼ SE¼ & Lot 6,	11	54	13	72.50	
90	NW¼ NW¼, SE¼ SW¼, N½ SE¼ & SE¼ SE¼,	13	54	13	200	
91	NE¼ NE¼, W½ NE¼ & NW¼ SE¼,	15	54	13	160	
92	SE¼ NW¼, Lots 1 & 4,	19	54	13	132.21	
93	NE¼ SE¼, Lots 3 & 7,	21	54	13	89.10	
94	W½ NE¼, NE¼ NW¼ & SW¼ SE¼,	23	54	13	160	
95	NE¼, SE¼ NW¼, Lots 2, 4, 5, & 7,	25	54	13	290.55	
96	W½ NE¼, NE¼ NW¼, SW¼ NW¼ & W½ SW¼,	27	54	13	240	
97	SE¼ NE¼, SE¼ SW¼, SW¼ SE¼, Lots 1, 2, 5 & 7,	29	54	13	221.60	
98	S½ NE¼,	31	54	13	78.50	
99	E½ NE¼, NW¼ NE¼, SE¼ SW¼ & SW¼ SE¼,	35	54	13	200	
100	SW¼ NE¼, N½ S½, SE¼ SW¼ &SW¼ SE¼,	1	55	13	280	
101	E½ NE¼, SW¼ NE¼, N½ NW¼, SW¼ NW¼, S½ SW¼, W½ SE¼ & NE¼ SE¼,	5	55	13	431.25	
102	E½ NE¼, SW¼ NE¼, SE¼ SW¼, W½ SE¼ & SE¼ SE¼,	7	55	13	280	
103	S½ NE¼, N½ NW¼, E½ SW¼ & NW¼ SE¼,	9	55	13	289	
104	SE¼ NE¼, W½ NW¼, SE¼ SW¼ & SE¼,	11	55	13	320	
105	N½ & SW¼ SE¼,	13	55	13	360	
106	N½ NE¼, NE¼ SE¼ & W½,	15	55	13	440	
107	SE¼ NE¼, NW¼ & N½ SW¼,	17	55	13	280	
108	NW¼ NE¼ & N½ NW¼,	19	55	13	124.35	
109	E½ NE¼, SW¼ NE¼, E½ NW¼, NW¼, SW¼ NW¼, SW¼ & NE¼ SE¼,	21	55	13	440	
110	NW¼, N½ SW¼ & SW¼ SE¼,	23	55	13	280	
111	NE¼ SE¼, Lots 1, 2, 9 & 10,	25	55	13	206.35	

260

SCHEDULE A--2

LIST

of patented and selected lands of the Northern Pacific Railroad Company to be sold under the decree of sale entered on the 25th day of May, 1899, in the United States Circuit Court for the Eastern District of Wisconsin, in the cause wherein the Farmer's Loan & Trust Company is complainant, and the Northern Pacific Railroad Company and others are defendants; and a certain other decree ancillary thereto entered in a like cause pending between said parties in the United States Circuit Court for the District of Minnesota on the 5th day of June, 1899.

Lands in the State of Minnesota, County of St. Louis.

(Note—Lands affected by outstanding contracts of sale are indicated by contract number opposite thereto.)

Item Number	DESCRIPTION OF LAND	Sec.	Tp. N.	R. W.	Area	Numbered Contract
112	SE¼ NW¼, E½ SW¼ & N½ SE¼,	27	55	13	200	
113	NW¼ SE¼,	29	55	13	40	
114	Lot 3,	31	55	13	41.50	
115	E½ SE¼,	33	55	13	80	
116	N½ NE¼, SW¼ NE¼, E½ NW¼, NE¼ SW¼ & NW¼ SE¼,	35	55	13	280	
117	NE¼ & SW¼,	3	51	14	319.48	
118	NW¼ & E½ SW¼,	11	51	14	240	
119	SE¼,	13	51	14	160	
120	W½ NW¼ & SE½ NW¼,	17	51	14	120	
121	NE¼,	21	51	14	160	
122	SE¼,	29	51	14	160	
123	NE¼ NW¼,	1	52	14	42.04	
124	NW¼ NE¼ & Lot 1,	3	52	14	83.21	
125	E½ NE¼, N½ SW¼ & SW¼ SW¼,	5	52	14	201.55	
126	N½ NE¼ & E½ SE¼,	7	52	14	160	
127	NW¼ NW¼, NW¼ SW¼ & Lot 1,	9	52	14	127.12	
128	NW¼ NE¼, NE¼ NW¼ SE¼ SW¼ & S½ SE¼,	13	52	14	200	
129	W½ NE¼, SE¼ NE¼, S½ SW¼, SE¼ & Lot 4,	15	52	14	383.15	
130	NW¼ & Lot 5,	17	52	14	161.34	
131	NE¼, SE¼ NW¼, W½ NW¼ & SW¼,	19	52	14	441.68	
132	NE¼ & S½	23	52	14	480	
133	All	25	52	14	607.11	
134	N½ SE¼,	27	52	14	80	
135	E½ SW¼,	33	52	14	80	
136	S½ SW¼ & SE¼ SE¼,	35	52	14	120	
137	NE¼ & W½	3	53	14	449.86	
138	E½, NW¼, N½ SW¼ & SE¼ SW¼,	5	53	14	563.20	
139	W½ NE¼, SE¼ NE¼ & W½ NW¼,	7	53	14	205.97	
140	N½ N½, N½ S½, S½ SW¼, & & SW¼ SE¼,	9	53	14	440	
141	E½ NW¼ & SW¼ NW¼,	15	53	14	120	
142	N½ NE¼,	17	53	14	80	
143	SW¼ NE¼,	19	53	14	40	
144	NW¼ SW¼,	21	53	14	40	

SCHEDULE A--2

261

LIST

of patented and selected lands of the Northern Pacific Railroad Company to be sold under the decree of sale entered on the 25th day of May, 1899, in the United States Circuit Court for the Eastern District of Wisconsin, in the cause wherein the Farmer's Loan & Trust Company is complainant, and the Northern Pacific Railroad Company and others are defendants; and a certain other decree ancillary thereto entered in a like cause pending between said parties in the United States Circuit Court for the District of Minnesota, on the 5th day of June, 1899.

Lands in the State of Minnesota, County of St. Louis.

(Note—Lands affected by outstanding contracts of sale are indicated by contract number opposite thereto.)

Item Number	DESCRIPTION OF LAND	Sec.	Tp.	R.	Area	Numbered Contract
145	NW¼ NE¼, E½ NW¼ & N½ SW¼,	29	53	14	200	
146	NE¼	31	53	14	160	
147	Island No. 1 & Lots 5, 6, & 7,	33	53	14	78.08	
148	S½ SW¼,	1	54	14	80	
149	SW¼ NW¼, S½ SW¼ & E½ SE¼,	3	54	14	200	
150	SW¼ NE¼, NW¼ SW¼ & NE¼ SE¼,	5	54	14	120	
151	SW¼ NE¼, SW¼ SW¼ & SW¼ SE¼,	7	54	14	118.92	
152	SE¼ NE¼,	9	54	14	40	
153	SE¼ SW¼,	13	54	14	40	
154	SE¼ SE¼,	15	54	14	40	
155	SW¼ NE¼, SE¼ SW¼, W½ SE¼ & SE¼ SE¼,	17	54	14	200	
156	W½ NE¼, NW¼, N½ SW¼, SW¼ SW¼ & N½ SE¼,	19	54	14	403.20	
157	SE¼ SE¼,	21	54	14	40	
158	SE¼ NW¼ & SE¼ SW¼,	23	54	14	80	
159	NE NE¼ & S½ N¼,	25	54	14	200	
160	SW¼ SW¼,	27	54	14	40	
161	NE¼ NE¼,	29	54	14	40	
162	NW¼ NE¼, W½ SE¼ & SE¼ SE¼,	31	54	14	160	
163	W½ SE¼ & SE¼ SE¼,	33	54	14	120	
164	W½, NW¼ SE¼ & E½ SE¼,	35	54	14	440	
165	SE¼ SW¼, NE¼ SE¼ & Lots 1 & 4,	1	55	14	158.96	
166	S½ NE¼, E½ SW¼ & NW¼ SE¼,	5	55	14	200	
167	SW¼ NE¼ & Lot 2,	7	55	14	81.28	
168	SW¼ NE¼ & SW¼ NW¼,	9	55	14	80	
169	NW¼ SW¼,	11	55	14	40	
170	NW¼ NE¼, NE¼ SW¼, W½ SE¼ & NE¼ SE¼,	13	55	14	200	
171	NE¼ NE¼, SW¼ NE¼, SE¼ NW¼, W½ SW¼, SE¼ SW¼ & NE¼ SE¼,	15	55	14	280	
172	NW¼ NE¼ & SE¼ NW¼,	17	55	14	80	
173	W½ NE¼, E½ NW¼, W½ SW¼ & SW¼ SE¼,	21	55	14	280	
174	Lot 2,	23	55	14	32.25	

262

SCHEDULE A--2

LIST

of patented and selected lands of the Northern Pacific Railroad Company to be sold under the decree of sale entered on the 25th day of May, 1899, in the United States Circuit Court for the Eastern District of Wisconsin, in the cause wherein the Farmer's Loan & Trust Company is complainant, and the Northern Pacific Railway Company and others are defendants; and a certain other decree ancillary thereto entered in a like cause pending between said parties in the United States Circuit Court for the District of Minnesota on the 5th day of June, 1899.

Lands in the State of Minnesota, County of St. Louis.

(Note—Lands affected by outstanding contracts of sale are indicated by contract number opposite thereto.)

Item Number	DESCRIPTION OF LAND	Sec.	Tp. N	R. W	Area	Numbered Contract
175	SW¼ NW¼,	25	55	14	40	
176	SE¼ NW¼,	29	55	14	40	
177	N½ NE¼ & NE¼ NW¼,	35	55	14	120	
178	N½ NW¼,	1	51	15	80.17	
179	N½ NE¼,	3	51	15	80.08	
180	SW¼ SE¼,	5	51	15	40	
181	NW¼ NE¼, NW¼ & NW¼ SW¼,	9	51	15	240	
182	E½ W½ & SW¼ SW¼,	11	51	15	200	
183	E½ NW¼, SW¼ NW¼ & S½,	15	51	15	440	
184	Lots 1 & 3,	1	52	15	35.30	
184	Lots 8 & 9,	1	52	15	74.03	8772
185	SW¼ NW¼, N½ SW¼ & SE¼ SE¼,	3	52	15	160	
186	Lots 6 & 7,	11	52	15	56.51	
187	W½ NE¼ & SE¼,	13	52	15	240	
188	SE¼ NE¼, Lots 1, 2, 3, & 4,	17	52	15	179.17	
188a	Lots 2, 6, 7 & 8,	19	52	15	152.92	
189	S½ NE¼, SE¼ NW¼, SW¼ SW¼ SE¼ SE¼,	23	52	15	200	
190	NE¼, E½ NW¼ & S½,	25	52	15	560	
191	NW¼ SW¼ & S½ SE¼,	27	52	15	120	17676
192	N½ N½,	31	52	15	158.97	
193	S½ NE¼, NE¼ SW¼, N½ SE¼ & SE¼ SE¼,	33	52	15	240	17676
194	NW¼,	35	52	15	160	17676
195	NE¼ NE¼ & W½ NE¼, E½ NW¼ & N½ SW¼,	1	53	15	250.03	
196	S½ NE¼ & N½ SE¼,	3	53	15	160	
197	SE¼ NE¼,	5	53	15	40	
198	W½ NE¼, SE¼ NE¼, W½ & SE¼,	7	53	15	596.88	
199	SE¼ NE¼, NE¼ NW¼, SE¼ SW¼ & N½ SE¼,	11	53	15	200	
200	Lot 1,	13	53	15	29.51	
201	NE¼ NE¼,	51	53	15	40	
202	S½ SW¼, N½ SE¼, SW¼ SE¼,	17	53	15	200	
203	NE¼ NE¼, SW¼ NE¼, NW¼ NW¼ & SW¼,	19	53	15	273.19	
204	N½ NE¼, SW¼ NE¼, SE¼ NW¼, N½ SW¼, NW¼ SE¼ & SE¼ SE¼,	21	53	15	320	
205	SE¼ NE¼	23	53	15	40	

SCHEDULE A--2

263

LIST

of patented and selected lands of the Northern Pacific Railroad Company to be sold under the decree of sale entered on the 25th day of May, 1899, in the United States Circuit Court for the Eastern District of Wisconsin, in the cause wherein the Farmer's Loan & Trust Company is complainant, and the Northern Pacific Railroad Company and others are defendants; and a certain other decree ancillary thereto entered in a like cause pending between said parties in the United States Circuit Court for the District of Minnesota, on the 5th day of June, 1899.

Lands in the State of Minnesota, County of St. Louis.

(Note—Lands affected by outstanding contracts of sale are indicated by contract number opposite thereto.)

Item Number	DESCRIPTION OF LAND	Sec.	Tp. N	R. W	Area	Numbered Contract
206	SE¼ SW¼,	25	53	15	40	
207	SE¼ NE¼ & SE¼ SW¼,	27	53	15	80	
208	NE¼, S½ NW¼, N½ SW¼, SW¼ SW¼ & NW¼ SE¼,	29	53	15	400	
209	NE¼ NE¼, SE¼ NW¼ & N½ SW¼,	31	53	15	156.17	
210	E½ NE¼ & SW¼ NW¼,	33	53	15	120	
211	W½ NE¼, W½ NW¼, SE¼ NW¼, E½ SW¼ & SW¼ SE¼,	35	53	15	317.31	
212	NE¼ SW¼ & N½ SE¼,	1	54	15	120	
213	W½ NE¼, SE¼ NE¼, E½ NW¼, SW¼ NW¼, & S½,	3	54	15	569.07	
214	S½ NE¼, SE¼ NW¼ & S½ SW¼,	5	54	15	200	
215	All	7	54	15	611.48	
216	E½, NW¼, N½ SW¼ & SE¼ SW¼,	9	54	15	600	
217	N½ NE¼, SW¼ NE¼, SW¼ NW¼, NW¼ SW¼ & SE¼ SE¼,	11	54	15	240	
218	N½ NE¼, SW¼ NE¼ & W½,	15	54	15	440	
219	N½, NE¼, NW¼ NW¼ & S½ SE¼,	17	54	15	200	
220	N½ NE¼, NE¼ SW¼, NW¼ SE¼, Lots 3, 5, & 8,	19	54	15	239.56	
221	N½ NE¼, SW¼ NE¼, NE¼ SW¼, S½ SW¼, NW¼ SE¼, SE¼ SE¼, Lots 1, 3, 4 & 5,	21	54	15	427.60	
222	SE¼ NE¼, S½ NW¼, N½ SW¼, SW¼ SW¼ & W½ SE¼,	23	54	15	320	
223	E½ NE¼, & E½ SW¼,	25	54	15	160	
224	E½ NE¼, SW¼ NE¼ & S½ NW¼,	27	54	15	200	
225	NE¼ SW¼, SW¼ SW¼ & NW¼ SE¼,	29	54	15	120	
226	NE¼ NW¼ & Lot 4,	31	54	15	81.97	
227	SW ¼ SE¼,	33	54	15	40	
228	NW¼ SW¼,	35	54	15	40	
229	SW¼ SE¼,	3	55	15	40	
230	S½ SW,	7	55	15	80.18	
231	SW¼ NW¼, N½ SW¼ & NW¼ SE¼,	9	55	15	160	
232	SE¼ NE¼, NE¼ SE¼, Lots 1, 9 & 10,	11	55	15	196.28	

264

SCHEDULE A--2

LIST

of patented and selected lands of the Northern Pacific Railroad Company to be sold under the decree of sale entered on the 25th day of May, 1899, in the United States Circuit Court for the Eastern District of Wisconsin, in the cause wherein the Farmer's Loan & Trust Company is complainant, and the Northern Pacific Railroad Company and others are defendants; and a certain other decree ancillary thereto entered in a like cause pending between said parties in the United States Circuit Court for the District of Minnesota on the 5th day of June, 1899.

Lands in the State of Minnesota, County of St. Louis.

(Note—Lands affected by outstanding contracts of sale are indicated by contract number opposite thereto.)

Item Number	DESCRIPTION OF LAND	Sec.	Tp. 51	R. 16	Area	Numbered Contract
233	Lots 1, 2, 3, 4, 5, 6 & 7,	15	55	15	268.58	
234	E½ NE¼ & NE¼ SE¼,	17	55	15	120	
235	NE¼, NE¼, NW¼ NW¼, S½ N½, N½ S½ & S½ SE¼,	19	55	15	484.14	
236	N½ NE¼, SW¼ NE¼, S½ NW¼, N½ SW¼, Lots 2, 3, 4, 6 & 8,	21	55	15	401.39	
237	NE¼, S½ NW¼, SW¼ & N½ SE¼,	23	55	15	480	
238	SW¼ NW¼ & E½ SW¼,	25	55	15	120	
239	N½ NW¼, SE¼ SE¼, Lots 1 & 2,	27	55	15	199	
240	NE¼ NE¼, N½ NW¼, SW¼ NW¼, NE¼ SE¼, Lots 1, 4, 8 & 9,	29	55	15	302.90	
241	SW¼ SE¼,	31	55	15	40	
242	N½ SE¼,	35	55	15	80	
243	SE¼ NE¼ & NW¼ SE¼,	5	52	16	80	
244	NE¼ NW¼,	9	52	16	40	
245	SW¼ NE¼, NE¼ SW¼, S½ SW¼, W½ SE¼, Lots 1, 2 & 3,	13	52	16	368.10	
246	E½ SW¼, SE¼, Lots 5, 6 & 8,	25	52	16	334.05	
247	Lots 1, 2 & SE¼ SE¼,	1	53	16	117.83	
248	Lot 4,	5	53	16	36.85	
249	All,	1	54	16	627.76	
250	E½ NE¼ SW¼, SW¼ SW¼, Lots 5 & 6,	3	54	16	423.36	
251	Lot 9,	7	54	16	13	
252	SW¼ NW¼, Lots 1, 2 & 4,	9	54	16	175.75	
253	NE¼, E½ NW¼, SW¼ NW¼, NE¼ SW¼ & N½ SE¼,	11	54	16	400	
254	NE¼ NW¼, Lots 2 & 7,	13	54	16	120.25	
255	SE¼ SW¼,	15	54	16	40	
256	SW¼ NE¼,	17	54	16	40	
257	Lot 8,	19	54	16	.50	
258	S½ N½, NE¼ SW¼, NW¼ SE¼ & SE¼ SE¼,	23	54	16	280	
259	NE¼ NE¼,	25	54	16	40	
260	NE¼ SW¼,	31	54	16	40	
261	N½ NW¼ & SE¼ NW¼,	35	54	16	120	
262	S½ NE¼, SW¼ NW¼, N½ S½ & SE¼ SE¼,	13	55	16	320	
263	S½ SW¼,	15	55	16	80	
264	S½ S½,	17	55	16	160	
265	E½ SE¼,	19	55	16	80	

SCHEDULE A--2

265

LIST

of patented and selected lands of the Northern Pacific Railroad Company to be sold under the decree of sale entered on the 25th day of May, 1899, in the United States Circuit Court for the Eastern District of Wisconsin, in the cause wherein the Farmer's Loan & Trust Company is complainant, and the Northern Pacific Railroad Company and others are defendants; and a certain other decree ancillary thereto entered in a like cause pending between said parties in the United States Circuit Court for the District of Minnesota, on the 5th day of June, 1899.

Lands in the State of Minnesota, County of St. Louis.

(**Note**—Lands affected by outstanding contracts of sale are indicated by contract number opposite thereto.)

Item Number	DESCRIPTION OF LAND	Sec.	Tp.	R.	Area	Numbered Contract
266	NW¼ NW¼, S½ N½ & SW¼....	21	55	16	337	
267	N½ NE¼, SE¼ NE¼, N½ NW¼, SW¼ NW¼, NW¼ SW¼ & S½ S½, ...	23	55	16	440	
268	NW¼ NE¼ & N½ NW¼,.....	25	55	16	120	
269	N½ NE¼, SW¼ NE¼ & NW¼,..	27	55	16	280	
270	NE¼ SW¼, Lots 1, 2, 3, 7, 8 & 10,	29	55	16	216.75	
271	SE¼ SE¼, & Lot 3,.....	33	55	16	76.25	
272	All	35	55	16	468	
273	Lot 2, ...	3	53	17	27.48	
274	SE¼ NE¼, SE¼ NW¼, E½ SW¼ & S½ SE¼, ...	5	53	17	240	
275	N½ N½ & SE¼ NW¼,.....	9	53	17	200	
276	NE¼, E½ NW¼, SW¼ NW¼, SW¼ SE¼, & E½ SE¼, ...	11	53	17	400	
277	S½ NE¼, SE¼ NW¼, NE¼ SW¼ & N½ SE¼, ...	13	53	17	240	
278	NW¼ NE¼, SE¼ NE¼, W½ SE¼, & SE¼ SE¼, ...	15	53	17	200	
279	W½ NW¼ & S½.....	25	53	17	400	
280	Lot 2, ...	5	54	17	34.92	
281	Lots 1 & 2, ...	7	54	17	71.49	
282	Lots 1, 2, 3, 4, 5, 6, 7, 8 & 9,.....	9	54	17	298.75	
283	Lots 3 & 4, ...	11	54	17	76.50	
284	SW¼ SW¼, ...	13	54	17	40	
285	Lots 1, 2, 3, 6, 7, 8 & 9,.....	17	54	17	261.50	
286	S½ NE¼, SE¼ SW¼, W½ SE¼, SE¼ SE¼, Lots 1, 2, 3, & 4,.....	13	55	17	359.50	
287	N½ NW¼, Lots 1 & 2,.....	23	55	17	157.20	
288	E½ SE¼, ...	33	55	17	80	
289	Lots 1, 2, 3, & NE¼ NW¼,.....	7	53	18	99.78	
290	N½ NW¼, ...	17	53	18	80	
291	SW¼ SW¼, ...	3	54	18	40	
292	NE¼ NE¼ & SE¼ SE¼.....	9	54	18	80	
293	N½ NW¼, SE¼ NE¼, S½ SW¼, NE¼ SE¼ & SW¼ SE¼,.....	13	54	18	280	
294	NE¼ NE¼, NW¼ SE¼ & SE¼ SE¼, ...	15	54	18	120	
295	SE¼ SW¼ & SW¼ SE¼.....	17	54	18	80	
296	E½ SE¼, ...	19	54	18	80	6222
297	NW¼ SW¼, ...	21	54	18	40	
298	NW¼ NW¼, S½ SW¼ & W½					

266

SCHEDULE A--2

LIST

of patented and selected lands of the Northern Pacific Railroad Company to be sold under the decree of sale entered on the 25th day of May, 1899, in the United States Circuit Court for the Eastern District of Wisconsin, in the cause wherein the Farmer's Loan & Trust Company is complainant, and the Northern Pacific Railroad Company and others are defendants; and a certain other decree ancillary thereto entered in a like cause pending between said parties in the United States Circuit Court for the District of Minnesota on the 5th day of June, 1899.

Lands in the State of Minnesota, County of St. Louis.

(**Note**—Lands affected by outstanding contracts of sale are indicated by contract number opposite thereto.)

Item Number	DESCRIPTION OF LAND	Sec.	Tp.	R.	Area	Numbered Contract
	SE¼,					
299	SW¼ NE¼, NW¼ NW¼, SE¼ NW¼ & NE¼ SW¼,	23	54	18	200	
300	N½ NW¼ & NW¼ SE¼,	25	54	18	160	
301	NE¼ NW¼,	29	54	18	120	
302	S½ SW¼,	35	54	18	40	
303	NW¼ NE¼ & NW¼,	19	55	18	75.17	
304	SE¼ NE¼, NE¼ SE¼, Lots 4, 5 & 6,	33	55	18	200	
305	SE¼ NW¼, E½ SW¼, Lots 1, 2, 4, 5, 6, 7 & 8,	5	52	19	152.59	
306	NW¼,	7	52	19	289.39	
307	Lot 7,	9	52	19	160	
308	SW¼ SE¼,	13	53	19	39.55	
309	E½ SE¼,	15	53	19	40	
310	E½ NW¼, NW¼ SE¼, Lots 3 & 4,	17	53	19	80	
311	SW¼ SW¼,	19	53	19	196.40	
312	S½ SE¼, Lots 1, 3, 4, 6, 7, 8, 9, & 10,	25	53	19	40	
313	W½ W½,	27	53	19	294.65	
314	SE¼ NW¼, NE¼ SW¼, Lots 1, 2, 3, 4, & 6,	29	53	19	160	
315	NE¼ SW¼, SE¼ SE¼, Lots 1, 2, 3, 4, 6, & 7,	31	53	19	244.95	
316	NW¼ NW¼, SE¼ NW¼, NW¼ SE¼, Lots 6 & 9,	33	53	19	309.50	
317	All	5	54	19	194.60	
318	E½ E½, W½ NW¼, NW¼ SW¼, Lots 1, 2, 3, 4, 5, 6, 7, & 8,	7	54	19	626.40	
319	SE¼, NW¼ SW¼ & S½ SW¼,	17	54	19	580.45	
320	SW¼ NW¼,	21	54	19	280	
321	E½ NE¼, E½ SW¼, Lots 1, 4, 5, 6, 7 & 8,	27	54	19	40	
322	SE¼ SE¼,	29	54	19	362.60	
323	NE¼ NE¼, NW¼ & NW¼ SE¼,	31	54	19	40	
324	Lots 6 & 7,	33	54	19	239.75	
324	Lots 13,	15	55	19	53.85	17311
325	E½ SE¼ & SW¼ SE¼,	15	55	19	.05	
325	Lots 1, 2, & SE¼ NE¼,	21	55	19	120	
326	NW¼ NW¼,	21	55	19	64.50	2155
327	SW¼ NE¼, SE¼ NW¼, NE¼	25	55	19	40	

267

SCHEDULE A--2

LIST

of patented and selected lands of the Northern Pacific Railroad Company to be sold under the decree of sale entered on the 25th day of May, 1899, in the United States Circuit Court for the Eastern District of Wisconsin, in the cause wherein the Farmer's Loan & Trust Company is complainant, and the Northern Pacific Railroad Company and others are defendants; and a certain other decree ancillary thereto entered in a like cause pending between said parties in the United States Circuit Court for the District of Minnesota, on the 5th day of June, 1899.

Lands in the State of Minnesota, County of St. Louis.

(Note—Lands affected by outstanding contracts of sale are indicated by contract number opposite thereto.)

Item Number	DESCRIPTION OF LAND	Sec.	Tp. N	R. W	Area	Numbered Contract
	SW¼ & NE¼ SE¼,	27	55	19	160	
328	Lot 6,	29	55	19	.30	15795
329	SE¼ NE¼, SE¼, Lots 3, 5, 6 & 9,	31	55	19	333.92	
330	W½ E½, W½ & SE¼ SE¼,	33	55	19	520	
331	NE¼ NE¼ & S½ NW¼,	35	55	19	120	
332	SE¼ NW¼ & Lots 3, 4, 5, 6, 7, 8 & 9,	5	51	20	208.95	
333	W½ NE¼, Lots 2, 3, & 4,	7	51	20	184.91	
333	E½ NW¼,	7	51	20	80	17743
334	S½ SE¼,	1	52	20	80	
335	Lot 4,	7	52	20	50.15	
336	SE¼ SW¼, Lots 1, 2, 3, 5, 6, 7 & 8,	13	52	20	289.55	
337	S½ N½ & N½ S½,	23	52	20	320	
338	SW¼ SE¼,	29	52	20	40	
339	S½ SE¼,	1	53	20	80	
340	E½ SW¼ & SE¼,	19	53	20	240	
341	W½ SW¼,	21	53	20	80	
342	NW¼, E½ SW¼ & W½ SE¼,	23	53	20	320	
343	S½ NE¼, N½ SW¼, SE¼ SW¼ & SE¼,	1	54	20	360	
344	SE¼ NE¼ & NE¼ SE¼,	5	54	20	80	
345	SE¼ SE¼,	9	54	20	40	
346	NE¼ NW¼, S½ NW¼ & SE¼ SE¼,	13	54	20	160	
347	SE¼ SW¼,	33	54	20	40	
348	S½ N½, SE¼ SW¼, NE¼ SE¼ & S½ SE¼,	13	55	20	320	
349	S½ NE¼ & W½ SE¼,	15	55	20	160	
350	NW¼ NW¼	23	55	20	40	
351	SW¼ SW¼,	1	51	21	40	16195
351	SE¼ SW¼,	1	51	21	40	16284
352	SW¼ SE¼,	3	51	21	40	
353	NE¼ SE¼,	7	51	21	40	
354	NE¼ NE¼ & SE¼ SE¼,	9	51	21	80	
355	E½ NE¼,	11	51	21	80	17428
355	S½ SE¼,	11	51	21	80	17735
355	W½ NE¼, E½ NW¼, SW¼ NW¼, SW¼ & N½ SE¼,	11	51	21	440	
356	W½ NE¼, NW¼, N½ SW¼, SW¼ SW¼ & NW¼ SE¼,	13	51	21	400	
357	N½, N½ SW¼, SW¼ SW¼, & SW¼ SE¼,	15	51	21	480	

268

SCHEDULE A--2

LIST

of patented and selected lands of the Northern Pacific Railroad Company to be sold under the decree of sale entered on the 25th day of May, 1899, in the United States Circuit Court for the Eastern District of Wisconsin, in the cause wherein the Farmer's Loan & Trust Company is complainant, and the Northern Pacific Railroad Company and others are defendants; and a certain other decree ancillary thereto entered in a like cause pending between said parties in the United States Circuit Court for the District of Minnesota on the 5th day of June, 1899.

Lands in the State of Minnesota, County of St. Louis.

(Note—Lands affected by outstanding contracts of sale are indicated by contract number opposite thereto.)

Item Number	DESCRIPTION OF LAND	Sec.	Tp.	R.	Area	Numbered Contract
358	SE¼,	17	51	21	160	
359	SW¼, N½ SE¼ & SW¼ SE¼	19	51	21	275.16	
360	NW¼ NW¼,	21	51	21	40	
361	Lot 1,	31	51	21	42.15	
362	NE¼ NE¼,	33	51	21	40	
363	W½ SE¼ & SE¼ SE¼,	7	52	21	120	
364	N½ NE¼, less R-W	17	52	21	80	
365	NE¼ NW¼,	27	52	21	40	
366	W½ SW¼,	29	52	21	80	
367	NE¼ NE¼,	31	52	21	40	
368	SW¼ SW¼,	3	53	21	40	
369	E½ SW¼, SE¼, Lots 1, 2, 3, & 4,	5	53	21	361.44	
370	S½ NE¼,	7	53	21	80	
371	SW¼ SW¼,	9	53	21	40	
372	NE¼ & NE¼ NW¼,	11	53	21	200	
373	S½ NE¼, E½ NW¼, SW¼ NW¼ & NW¼ SE¼,	15	53	21	400	
374	W½ NE¼,	17	53	21	80	
375	NE¼, SE¼ NW¼ & N½ SE¼,	21	53	21	280	
376	NE¼ NW¼, SE¼ SW¼, W½ SE¼ & SE¼ SE¼,	23	53	21	200	
377	E½, NW¼ & NE¼ SW¼,	35	53	21	520	
378	S½ SE¼,	35	53	21	80	
379	NE¼ & NW¼ SE¼,	5	54	21	197.29	
380	E½, SE¼ NW¼, Lots 4 & 5,	7	54	21	440.55	
381	SE¼ NW¼,	21	54	21	40	
382	W½ SW¼,	27	54	21	80	
383	NW¼ NE¼, NW¼ NW¼, NW¼ SW¼ & NW¼ SE¼,	31	54	21	160.63	
384	SW¼ NE¼, SE¼ SW¼ & SW¼ SE¼,	33	54	21	120	
385	SE¼ SW¼ & Lot 6,	21	55	21	40.30	
386	NE¼ SW¼, NW¼ SE¼, S½ S½, Lots 1, 5, 6 & 7,	29	55	21	366.65	
386	Lots3, 4 & NW¼ SW¼,	29	55	21	120.55	1234
387	S½ SE¼,	31	55	21	80	
387	Lots 1 & 2,	31	55	21	78.65	1234
388	S½ SW¼, Lots 3, 4, & 5,	33	55	21	182	1234

389 All the patented or selected lands and rights in respect of such lands of the Northern Pacific Railroad Company in the said County of St. Louis, State of Minnesota, whether specified in the foregoing list or not, will be included in such sale.

SCHEDULE A--2

269

LIST

of patented and selected lands of the Northern Pacific Railroad Company to be sold under the decree of sale entered on the 25th day of May, 1899, in the United States Circuit Court for the Eastern District of Wisconsin, in the cause wherein the Farmer's Loan & Trust Company is complainant, and the Northern Pacific Railroad Company and others are defendants; and a certain other decree ancillary thereto entered in a like cause pending between said parties in the United States Circuit Court for the District of Minnesota, on the 5th day of June, 1899.

Lands in the State of Minnesota, County of St. Louis.

(Note—Lands affected by outstanding contracts of sale are indicated by contract number opposite thereto.)

Item Number	DESCRIPTION OF LAND	Sec.	Tp.	R.	Area	Numbered Contract
			N	W		

390 All lands within the County of St. Louis in the State of Minnesota, granted by the Congress of the United States to aid in the construction and equipment of the railroads of the Northern Pacific Railroad Company, for which patents have not issued and which have not been selected by and certified to said railroad company, but to which said railroad company is entitled under said grants of Congress, and all rights of said railroad company, to receive from the United States any lands within said county and state, which have not been certified or patented to said railroad company, whether under the grant expressed in the act of Congress of July 2, 1864, or under any subsequent grant by way of indemnity or otherwise to said railroad company together with all the right, title, interest and claim in or to any such lands, and all its rights to receive from the United States patents therefor; and also all mineral and other reservations and exceptions of every nature and description contained in any conveyance or contract in respect of lands within said County and State at any time made by said Railroad Company or its Receivers, or otherwise, and all rights, benefits, equity of redemption, title, interest or claim of said Railroad Company thereunder, and in and to all lands granted to it by the Congress of the United States within said County and State, and which may not be included in the sale under said decrees under the foregoing descriptions of lands, for which letters patent have issued to said Railroad Company and the right to receive lands for which letters patent have not issued, but which have been selected by and certified to said Company, whether or not such lands are now held by or have been heretofore sold, or contracted to be sold, by said Railroad Company or such Receivers, or are claimed to have been sold under judicial proceedings or for non-payment of taxes, or for any cause soever, and whether or not the same stand in the name of the said Railroad Company; it being the intention to include every possible right, title and interest of said Railroad Company in and to any of the lands within said county and state covered by any grant to said Railroad Company by the Congress of the United States, and which may not be included in the sale under said decrees under the foregoing description of lands for which letters patent have issued to said Railroad Company, and the right to receive lands for which letters patent have not issued, but which have been selected by and certified to said Company; all subject, however, to a certain mortgage or deed of trust, dated the 1st day of January, 1881, known as the General First Mortgage of said Northern Pacific Railroad Company, and executed by it to the Central Trust Company of New York, as Trustee.

Defendant's Exhibit No. 11.

270 Circuit Court of the United States, District of Minnesota.

The Farmers' Loan and Trust Company,
Against
Northern Pacific Railroad Company and others.

In Equity. Original Decree.

This cause came on to be heard on the Bill of complaint filed herein on May 26, 1896, by the complainant The Farmers' Loan and Trust Company and the answers of all the defendants herein to the said bill, and upon the pleadings, herein and upon the entire record in this cause: and it appearing to this Court that said Bill of Complaint and a certain Bill and Supplemental Bill of complaint pending in the Circuit Court of the United States for the Eastern District of Wisconsin, between the same parties, were brought for the purpose of sequestrating, selling and distributing among the creditors and parties entitled thereto all the lands, assets, property and effects of said defendant the Northern Pacific Railroad Company, other than the property in and by the decree of foreclosure heretofore entered in this cause on the 29th day of April, 1896, and in said Circuit Court of the United States for the Eastern District of Wisconsin, on the 27th day of April, 1896, found to be covered by the mortgage therein described and executed by said defendant Railroad Company to the Farmers' Loan and Trust Company, as trustee, or by said decrees directed to be sold thereunder: and it further appearing that certain of said remaining lands, assets, property, and effects are within the jurisdiction of this Court, and that a portion thereof are within the jurisdiction of said Circuit Court of the United States for
271 the Eastern District of Wisconsin: and it further appearing that a final decree of sequestration was taken and entered on the 25th day of May 1896, in said suit now pending in said Circuit Court of the United States for the Eastern District of Wisconsin, and a certified copy of said decree having been filed in this cause in this court: and it appearing that said Circuit Court of the United States for the Eastern District of Wisconsin is possessed of primary jurisdiction of the matters involved in this cause, and that said decree of sequestration entered in said Circuit Court of the United States for the Eastern District of Wisconsin is in the words and figures, following, to-wit:

Circuit Court of the United States, for the Seventh Judicial Circuit Eastern District of Wisconsin.

The Farmers' Loan and Trust Company, Complainant,
vs.
Northern Pacific Railroad Company, Phillip B. Winston, George R. Sheldon, William S. P. Prentice, William C. Sheldon, Jr., surviving partners of the firm of William C. Sheldon & Co. Edward D. Adams, Johnston Liningston and Charles W. Van Nostrand and others, Defendants.

Supplemental Decree.

This cause came on to be further heard upon the bill of complaint filed herein on August 15th, 1893, by the Farmers' Loan and Trust Company, Phillip B. Winston, George R. Sheldon, William S. P. Prentice, and William C. Sheldon Jr. with one William C. Sheldon, since deceased, and upon the answer of the Northern Pacific Railroad Company thereto filed herein on said day, and upon the supplemental Bill of the complainant herein filed this day and the Answers of the Northern Pacific
272 Railroad Company and the other defendants thereto and upon the other pleadings and proofs herein and upon all the papers on file, and was argued by Counsel, and upon consideration thereof, it was, on motion of Turner, McClure & Rolston, and Winkler, Flanders, Smith, Bottum and Vilas, Solicitors for the complainant, The Farmers' Loan and Trust Company, all the other parties appearing by counsel as follows, to-wit: Northern Pacific Railroad Company by Silas W. Pettit, Esq., and John F. Harper, Esq., its counsel: Edward D. Adams, Phillip B. Winston, George R. Sheldon, William S. P. Prentice, William C. Sheldon Jr., surviving partners of the firm of William C. Sheldon & Co., by William Nelson Cromwell, Esq., as counsel. Johnston Livingston and Charles B. Van Nostrand by Francis Lynde Stetson, Esq., as counsel, and no one opposing, it was thereupon

Ordered, Adjudged and Decreed as follows:

First: That the equity of said Bill and Supplement Bill is with the complainant The Farmers' Loan and Trust Company, and that the complainant is entitled to the relief therein prayed.

Second: It is hereby referred to Alfred L. Carey, Esq., of Milwaukee, as Special Master, to take an account of all the lands, assets property and effects of said Northern Pacific Railroad Company not found in and by the decree of foreclosure and sale entered herein to be covered by the mortgages of said Railroad Company executed to the Farmers' Loan and Trust Company, as trustee, or directed to be sold thereunder, in whosesoever hands the same may be and of the property as to which the receivership is hereby continued or created and of all other

property which has come or shall hereafter come into the hands of the receivers under this decree, and to ascertain and report to the court the names and residences of the creditors of said Railroad Company and the amounts and particulars of the respective claims of such claimants against said Railroad Company or its property, and it is ordered that the parties to this suit and the Receivers do attend from time to time before said Special Master as required by the order or summons of said Special Master, with the books, papers and documents in their possession relating to such property of said railroad company, that the said Special Master give notice by publication according to the course, rules and practice of this court in such cases, to all creditors of said Railroad Company not found in and by said decree of foreclosure to be covered by said mortgages to the Farmers' Loan and Trust Company, as trustee, or directed to be sold thereunder, to exhibit their claims in such manner and form as he, the said Special Master, may direct and approve, at or before such time and at such place as said Special Master may designate for that purpose, and all creditors and claimants failing to exhibit their claims to him in such manner and form within the time limited by him for that purpose shall be excluded from the benefit of the said reference under this order.

Third: That said Special Master shall pass the accounts of said receivers herein as to the matters covered by this decree, and fix the amount and items of property with which said receivers are or shall become chargeable, and on the proceedings before said Special Master any creditor or claimant who shall have filed a claim shall be allowed to except to the claim of any other claimant or creditor, and the said liberty of exception is given to either of the parties to this cause and to the said Receivers, and thereupon the said Special Master shall proceed to hear and determine without any special order, the matters of such exception, and embrace his conclusions thereon in his report to this court: and he is hereby authorized at the request of either party to any claim to make a separate
274 report to the Court upon such claim and to continue to make such separate reports from time to time whenever so requested and as the exigencies of the case may require.

Fourth: That the lands, assets, property and effects, real and personal, wheresoever situated, of said The Northern Pacific Railroad Company, other than the property found in and by said decree of foreclosure to be covered by said mortgages to the Farmers' Loan and Trust Company, as trustee, or di-

rected to be sold thereunder, be sequestrated, sold and distributed, and that Edwin H. McHenry and Frank G. Bigelow, the receivers herein, be and they are hereby continued and appointed as final receivers of said lands, assets, property and effects with all the usual powers and duties of Receivers in such cases and all the powers heretofore granted to them in the orders whereby they were appointed Receivers herein, and that the said defendant Railroad Company, except as to moneys by it received under order of any of its property other than the property found in and by said decree to be covered by said Mortgages to The Farmers' Loan and Trust Company, as Trustee, or directed to be sold thereunder, are hereby directed to deliver the same to said Receivers. And that the said defendant the Northern Pacific Railroad Company, do forthwith execute, acknowledge and deliver unto said Receivers as such [a] their successors and assigns, deed or deeds and assignments, sufficient in law, of all its right, title interest and claim in, to and upon all such other lands, property, assets and effects, and in and to any rights under any grant to it by the Congress of the United States relating to any such other lands, property, assets, or effects, and fully authorizing and empowering such Receivers, their successors and assigns, in the name of said defendant or otherwise, as they may be advised, to claim and receive from the United States patents or other sufficient
275 evidence of title, to the such other lands, nor theretofore patented, whether such other lands be within the original grant limits or in the indemnity limits of such grant of the United States.

Fifth: That said Receivers shall forthwith proceed to take possession of all such other property, assets and effects of said Railroad Company not already in their possession, and they are hereby authorized and directed from time to time to make sale or sales of such other lands, property assets and effects at public or private sale in accordance with the orders entered herein on the 22nd day of September 1893, and the 14th day of November 1893, and such further directions as the Court may hereafter make herein, and in the meantime, to act under and in accordance with said orders hereby confirmed and continued and to sue for, recover and collect and reduce to money all such other claims, demands, bills, accounts, and rights of action of said Railroad Company, and they may compromise or sell by public auction on due notice such as are doubtful or uncollectible and after deducting the amounts necessarily expended by them shall retain all moneys received by them subject to the further order of this court.

Sixth: That either party or the said Receivers may from time to time apply to this court for further directions at the foot

of the decree or on any report of the Special Master, and the costs and expenses of said references may be charged upon and paid out of the said funds in the hands of said Receivers unless otherwise directed by the said Special Master, who may award costs in his discretion, subject to review by the court, to or against any claimant, and all questions not herein disposed of are reserved for further hearing and decision, and jurisdiction in this cause is retained for the purpose and for the purpose of enforcing all the provisions of this decree.

Dated May 25th, 1895.

276 (Signed) WM. H. SEAMAN, Judge.

Thereupon, being fully advised in the premises, on motion of the Farmers' Loan and Trust Company, by its solicitors, Turner, McClure & Rolston and Eller & How, the other defendants having appeared by counsel, towit, The Northern Pacific Railroad Company by F. W. M. Cutcheon, its counsel P. B. Winston, George R. Sheldon and others by William Nelson Cromwell, their counsel, and not opposing,

It is ordered, adjudged and decreed by this court that the pleadings herein and the aforesaid decree entered in the Circuit Court of the United States for the Eastern District of Wisconsin on the 25th day of May, 1896, be and the same are hereby recognized as constituting sufficient reason for the passing of the present order and decree by this court.

It is ordered, adjudged and decreed that William D. Cornish of St. Paul, be and he is hereby, appointed Special Master in this suit to ascertain and report to this court the names and residences of the creditors of said Railroad Company, who reside in this district, the amounts due to them and the securities and liens held by them respectively for the payment of their claims. Within six weeks from this date, said Master shall publish a notice to said creditors of said company once in each week for four successive weeks in the St. Paul Pioneer Press and in the St. Paul Daily Dispatch to the effect that they must file and present their claims to him at St. Paul in this district, on or before the first day of October A. D. 1896, and that if they fail so to do they will be excluded from the benefits of this decree, the reference hereunder and the subsequent proceedings herein. The Special Master shall hear the proof of such claim at St. Paul in this district upon reasonable notice to the claimants respectively and to the parties to

277 this suit, of the time and place of such hearing. He shall report to this court with all convenient speed, and exceptions may be taken to his report by any of said creditors or by any of the parties to this suit, within thirty days

after the filing thereof, and the questions presented by said exceptions and the question of the confirmation of his report shall then be heard and determined by this Court. Upon the determination of these questions, a certified copy of his report and of the order of this court, allowing the claim referred to therein shall be forwarded to the Circuit Court of the United States for the Eastern District of Wisconsin.

All charges against, and liens upon any of the property of the Northern Pacific Railroad Company in this district not covered by the decree of foreclosure against it in this court, may be presented to and reported by said Master herein and may be enforced by proper proceedings in this court notwithstanding this order and decree. The creditors of the Northern Pacific Railroad Company, who reside in this district, are not required to present or prove their claims in any other way than as is hereinbefore directed in order to share in the benefits of this decree the reference hereunder and the subsequent distribution of the proceeds of the property in this suit. In case the claims of the creditors residing in this state, as finally allowed by this court, shall not, upon due presentation of their allowance as aforesaid to the Circuit Court of the United States for the Eastern District of Wisconsin, be there allowed and respectively classified with the same class of claims otherwise allowed in said court, or shall not be permitted to receive a pro rata share with such claims in the distribution of the proceeds of the property covered by the decree in that court in this case, then any such creditor or claimant may apply to this court for the collection and enforcement thereof and for this purpose this court reserved and retains
278 jurisdiction, control and the right of disposition of all the property of the Northern Pacific Railroad Company in this district, not covered by said foreclosure decree, and of all the proceeds thereof, notwithstanding any orders or provisions hereinbefore contained herein. On the first day of August 1896, and of every third month thereafter the receivers appointed hereunder shall file in this court a report showing the disposition of any of the property of the Northern Pacific Railroad Company in this district sold or disposed of by them under this order and decree and of the proceeds thereof.

Subject to the foregoing provisions of this decree and except as they modify the same, the decree of the United States Circuit Court for the Eastern District of Wisconsin, is hereby adopted and made the order and decree of this court, and this court doth now adjudge and decree that the lands, assets, property and effects of the said Northern Pacific Railroad

Company situated within the jurisdiction of this court and other than the property found in the and by said decree of foreclosure to be covered by said mortgages to the Farmers' Loan and Trust Company, as trustee, and directed to be sold thereunder by the decree of foreclosure in this court, be sequestrated, sold and distributed. Edward H. McHenry and Frank G. Bigelow the receivers appointed by said Circuit Court of the United States for the Eastern District of Wisconsin, are hereby appointed final receivers of the remaining lands, assets, property and effects of the Northern Pacific Railroad Company within this district and they are instructed to do and perform all and singular the things directed by this decree.

St. Paul, May 27, 1896.

WALTER H. SANBORN,
Circuit Judge.

Endorsed: Decree Filed May 27th, 1896. Oscar B. Hills, Clerk.

279 United States of America,
District of Minnesota.
Third Division.—Set.

I, Henry D. Lang, Clerk of the Circuit Court of the United States for the District of Minnesota, do hereby certify that I have carefully compared the foregoing paper writing with the original thereof, which is in my custody as such clerk, and that the said paper writing is a correct copy of such original and of the whole thereof, in the cause therein named.

Witness my hand as Clerk, and the seal of said Court. Done at my office in Saint Paul, Minnesota, this 30th day of October A. D., 1899.

(Signed) HENRY D. LANG, Clerk.

Seal of U. S. Circuit Court Dist. of Minnesota. By Louise B. Trott, Deputy.

Ten Cent Revenue Stamp.

Endorsed: Defendants Exhibit No. 11. Filed Dec. 1st, 1906. Henry D. Lang, Clerk, by E. Catherine Neff, Deputy Clerk.

280 Defendant's Exhibit No. 12.

Circuit Court of the United States, District of Minnesota, Third Division.

The Farmers, Loan and Trust Company, Complainant,
vs.

Northern Pacific Railroad Company, Phillip B. Winston, George R. Sheldon, William S. P. Prentice, William C. Sheldon, Jr., surviving partners of the firm of William C. Sheldon, & Co., Defendants.

The report of Alfred L. Cary, as Special Master of the Sales by him made of the lands and rights in respect of lands directed to be sold in and by the decrees of the Circuit Court of the United States for the Eastern District of Wisconsin, in a cause therein pending between the Farmers' Loan and Trust Company as complainant and the Northern Pacific Railroad Company and others as defendants to which this cause is ancillary, so far as such sales affect lands and rights in respect of lands in the State of Minnesota, having been filed herein; and it appearing to this Court that said Circuit Court of the United States for the Eastern District of Wisconsin in said cause to which this cause is ancillary, has upon a similar report of said Alfred L. Cary as Special Master, and of other reports of said Alfred Cary, as Special Master of sales by him made of lands and rights in respect of lands directed to be sold under said decrees and situate elsewhere than in said State of Minnesota has entered an order in the following form viz:

Circuit Court of the United States for the Seventh Judical Circuit and Eastern District of Wisconsin.

281 The Farmers' Loan and Trust Company, Complainant,

against. In Sequestration.

Northern Pacific Railroad Company, Phillip B. Winston, George R. Shendon, William S. P. Prentice and William C. Sheldon, Jr., surviving partners of the firm of William C. Sheldon & Co., Edward D. Adams, Johnston Livingston, Charles B. Van Norstraud, and others, Defendants.

Now come again all the parties by their respective solicitors, and comes also the purchaser Northern Pacific Railway Company; and its petition that the several reports of Alfred L. Cary, the Special Master heretofore filed herein, of the sales by him made of the lands and rights in respect of lands in and by the decrees herein directed to be sold, should be approved, and that the sales of said lands and rights in respect of lands of the Northern Pacific Railroad Company, briefly described in the notice of sale thereof, should be confirmed and made absolute, came on to be heard.

And it appearing by the several reports of said Special Master, so filed as aforesaid, that he has fully complied with the directions in said decrees as to the sale of said lands and rights

in respect of lands, and that such purchaser, the Northern Pacific Railway Company, was the highest and best bidder for said lands and rights in respect of lands sold as provided in said decrees, and that the same were struck off at the several sales thereof to the said purchaser.

Subject, however, as to the portions of said lands and rights, in respect of lands covered thereby, to the lien of a certain mortgage or deed of trust, dated January 1st, 1881, executed by the Northern Pacific Railroad Company to the Central Trust Company of New York, as trustee.

282 And it further appearing by such Special Master's Report, and by the said petition of the said purchaser, that the said purchaser has made the payments thus far obligatory upon it.

And it appearing by the said petition that the said purchaser, the Northern Pacific Railway Company, is a railroad corporation organized and existing under the laws of the State of Wisconsin, of which corporation every member is a citizen and a resident of the United States; that it had complied with all the requirements of law of each and every of the States of Minnesota and North Dakota, which are the only states of the United States in which any part of the said real property is situated, so as to enable and [entitled] it to transact business and to hold property, real and personal, in every such State; that the said corporation being the owner and holder of claims against the Northern Pacific Railroad Company which have been finally allowed by this court to the amount of more than $87,000,000 and has tendered assignment of the same to be cancelled or credited as provided in said decrees, on account of the respective bids made by said purchaser, the Northern Pacific Railway Company, for all said lands and rights in respect of lands.

And no sufficient cause being shown against the report of the Special Master or the granting of the petition of the said purchaser;

Now, on motion of Turner, McClure & Rolston, solicitors for the complainant, The Farmers' Loan and Trust Company, and of William Nelson Cromwell of counsel for the purchaser, all the other parties appearing by counsel, and all consenting that the said motion for confirmation of said sale and of the said reports of said Special Master made thereon, may be now heard and determined, and all questions thereunder adjudicated.

It is hereby ordered, adjudged and decreed as follows, to-wit:

The said several reports of Alfred L. Carey, the Special
283 Master, are in all things approved, and the respective sales by him made to the said Northern Pacific Railway Company of all and singular said patented lands and lands selected and certified and other lands and rights in respect of lands of the Northern Pacific Railroad Company, be and the same are respectively in all things ratified, approved and confirmed and made absolute, and

It is further ordered and decreed that upon delivery of the said assignments of said claims to the Special Master, but in blank as to the amount assigned out of the total of said claims, above mentioned as being held and tendered by the purchaser, prior to the execution of a deed of conveyance of said parcels, the said Special Master be and he hereby is authorized to sign, seal, execute and deliver deeds of conveyance and assignments to said purchaser, the Northern Pacific Railway Company, conveying to it all and singular the said patented lands, and lands selected and certified, and other lands and rights in respect of lands sold to it as aforesaid. But in lieu of such several deeds and assignments, the Special Master may execute, acknowledge and deliver a single deed covering and conveying as an entirety all the said lands and rights in respect of lands of the Northern Pacific Railroad Company and one assignment covering all such rights in respect of lands not embraced in said deed, wheresoever situated; and in order to facilitate the recording thereof, ten originals of each of such deeds or deed may be executed, acknowledged and delivered by the said Special Master, all or any one or more of which may be recorded, and each of which, when executed, acknowledged and delivered shall be deemed an original.

And it is further ordered and decreed, that the Receivers of this Court, shall make conveyances and assignments to
284 the said purchaser, its successors or assigns, of said lands and rights to and in respect of land.

On exhibition of any such deed or assignment executed and delivered by the Special Master as herein ordered, and upon the request of the grantee or assignee thereunder, the Receivers of this Court are authorized, directed and required to let the said purchaser, and its successors and assigns, into possession of the premises, therein conveyed, and to deliver to it any contract thereby assigned, and the Receivers of any party in this cause, having possession thereof, shall deliver such property and contracts over to the purchaser, its successors or assigns.

It is further ordered and decreed, that by way of further assurance and confirmation of title to such purchaser the said Northern Pacific Railroad Company, by its proper officers and

under its corporate seal, shall, sign, seal, execute, acknowledge and deliver to said purchaser, or to its successors or assigns, its deed or deeds of conveyance, assignment, transfer, release and further assurance of all the said lands and rights sold to said purchaser.

The Special Master shall hold said assignment of claims until the credit or payment on account thereof upon the bids of such purchaser shall be adjudged by the Court and he shall then fill up the blank in the same with the amount so due and file the same with the Clerk of this Court, and upon such filing of said assignment the said claims shall be and be deemed to be satisfied to the extent of the amount specified in said assignment.

Upon consent of the purchaser this decree is passed subject to the right of the Court to require as a condition thereof that upon final distribution of the fund in Court and in the hands of its Receivers there shall be paid upon all claims finally allowed and not owned by the purchaser a sum equal
285 to ten per centum of the amount of such claims before any payment upon claims owned by the purchaser.

Sept. 16th, 1899.

(Signed) JAS. G. JENKINS,
U. S. Circuit Judge.

And a certified copy of said order having been filed herein, and all the parties to this action appearing and consenting thereto,

Now, on motion of Jared How, solicitor for the complainant, above named,

It is ordered that said order of the Circuit Court of the United States for the Eastern District of Wisconsin, be and the same is hereby adopted and in all things made the order of this Court herein.

St. Paul, Sept. 20, 1899.

WALTER H. SANBORN,
Circuit Judge.

Endorsed: Decree of confirmation of sales of lands. Filed Sept. 20th, 1899. Henry D. Lang, Clerk, by Louise P. Trott, Deputy.

United States of America,
District of Minnesota,
Third Division—Set.

I, Henry D. Lang, Clerk of the Circuit Court of the United

States for the District of Minnesota, do hereby certify that I have carefully compared the foregoing paper writing with the original thereof, which is in my custody as such clerk, and that the said paper writing is a correct copy of such original and of the whole thereof, in the cause therein named.

Witness my hand as Clerk, and the seal of said Court. Done at my office in Saint Paul, Minnesota, this 22nd day of April, A. D., 1903.

[Seal] HENRY D. LANG, Clerk,
By Louise B. Trott, Deputy.

Endorsed: Defendant's Exhibit No. 12. Filed Dec. 1st, 1906. Henry D. Lang, Clerk, by E. Catherine Neff, Deputy Clerk.

286 Defendants' Exhibit No. 13.

Special Master's and Receivers' Deed.
St. Louis County, Minnesota.

An indenture, Made the 22nd day of September, in the year one thousand eight hundred and ninety-nine, between

Alfred L. Carey, as Special Master, appointed as such by the Circuit Court of the United States for the Eastern District of Wisconsin, in the cause in equity, and by the Circuit Courts of the United States in other districts in causes ancillary thereto as hereinafter mentioned, party of the first part;

Edwin H. McHenry and Frank G. Bigelow as Receivers of the Northern Pacific Railroad Company, a corporation created by an act of Congress of the United States, approved July 2, 1864, parties of the second part, and

Northern Pacific Railroad Company, a railroad corporation organized and existing under the laws of the State of Wisconsin, party of the third part:

Whereas, at the January term, A. D. 1896, of the Circuit Court of the United States for the Eastern District of Wisconsin—to-wit, on the 25th day of May, 1896—in a certain cause in equity pending therein, wherein The Farmers' Loan and Trust Company is complainant and the Northern Pacific Railroad Company, Philip B. Winston, George R. Sheldon, William S. P. Prentice and William C. Sheldon, Jr., surviving partners of the firm of William C. Sheldon & Company, and others are defendants, a certain sequestration decree was entered, whereby the said Edwin H. McHenry and Frank G. Bigelow were appointed Receivers of certain lands,
287 assets, property and effects, real and personal, of the said Northern Pacific Railroad Company, including

the lands, rights to lands and property hereinafter mentioned and described, and all of which the said defendant Northern Pacific Railroad Company, was, by said decree, ordered to forthwith convey unto said Receivers as such, their successors and assigns.

And whereas, certain decrees ancillary to that above mentioned and of like character, force and effect, were afterwards entered in like causes pending between the same parties in the Circuit Courts of the United States for the following districts, viz: in the District of Minnesota and in the District of North Dakota.

And whereas, at the January term, A. D. 1899, of the said Circuit Court of the United States for the Eastern District of Wisconsin—to-wit: on the 25th day of May, 1899—in said cause in equity pending therein, it was, among other things, ordered and decreed by said Court (1) that all the lands granted by Congress to aid in the construction and equipment of the railroads of the defendant, the Northern Pacific Railroad Company, and all rights of said defendant under the several land grants made to it by Congress in any such lands lying within the State of Minnesota and State of North Dakota east of the Missouri River, should be sold at public sale to the highest bidders in the manner specified in said decree; (2) that such sales should be made by Alfred L. Cary, Esq., who was thereby appointed Special Master for that purpose; (3) that all of said lands for which letters patent had issued to said defendant, Northern Pacific Railroad Company, and the right to receive lands for which letters patent had not issued but which had been selected by and certified to said company, should be sold in single sections or subdivisions thereof; (4) that
288 all lands for which patents had not issued and which had not been selected by and certified to said company, but to which said Northern Pacific Railroad Company was entitled under said grants of Congress, and all rights of said Northern Pacific Railroad Company to receive from the United States any lands which had not been certified or patented to said railroad company, whether under the grant expressed in the act of Congress of July 2, 1864, or under any subsequent grant, by way of indemnity or otherwise, to said company, together with all the right, title, interest and claim in or to any such lands, and all its rights to receive from the United States patents therefor, and also right, title, interest and equity in and to any other lands to which the said Northern Pacific Railroad Company might be entitled and which might have accrued or should thereafter accrue to it under any of said land grants, and also all right, title, equity and interest in and to any lands covered by or included in any of said land grants

and not thereinbefore specified, should be sold in one parcel as to such lands and rights in each county named in said decree and at the place in each such county designated in said decree; (5) that the Receivers appointed by said Court in said cause were, by said decree, required to file schedules showing the lands and rights to be sold under said decree with the Clerk of said Court and with the Clerks of the United States Circuit Courts for the Districts of Minnesota and North Dakota respectively, at least thirty days before the date of the first sale to be made under said decree; (6) that such sales should respectively be made upon a day or days to be fixed by said Special Master, and notice of the times and places of said sales, describing the property and rights to be sold and referring to said decree, should be published respectively once a week for at least four weeks prior to such sales, respectively in a newspaper printed, regularly issued and having a general
289 circulation in the county and state where said sales, respectively, were to be made as provided and designated in said decree.

And whereas, certain decrees ancellary to that of May 25th, 1899, above mentioned and of like character, force and effect, were entered June 5th, 1899, in like causes pending between the same parties in the Circuit Courts of the United States for the following districts, viz: in the District of Minnesota and in the District of North Dakota.

And whereas, said party of the first part, in pursuance of said decrees and a notice of sale given by him as required by said decrees, did, at one of the places and in one of the counties specified in said decrees as at and in which one of said sales was to be made, to-wit: at the Court House at Duluth in the County of St. Louis and State of Minnesota, and at the time specified in said notice of sale for the sale in said county, offer at public sale all the lands within said county granted by Congress to aid in the construction and equipment of the railroads of the defendant, Northern Pacific Railroad Company, and all rights of said defendant under the several land grants made to it by Congress in any such lands lying within said county, due notice of the time and place of such sale having been given pursuant to said decrees and according to law, and the said decrees having been complied with in all things touching and relating to said sale.

And whereas, at such sale, all of said lands within said County of St. Louis and State of Minnesota, for which letters patent had issued to said defendant, Northern Pacific Railroad Company, and the right to receive lands for which letters patent had not issued but which had been selected by and certified

290 to said Company, were offered and sold in single sections or subdivisions thereof, and were struck off to the said party of the third part for the respective sums set forth in the schedule marked A-2 (except as to the lands represented by "Item Number 390" in said schedule) annexed to the reports of such sales made by said party of the first part and hereinafter referred to such sums being the highest sums bidden respectively therefor.

And Whereas, at such sale, all of said lands within the County of St. Louis, in the State of Minnesota, for which patents had not issued and which had not been selected by and certified to said Northern Pacific Railroad Company, but to which said railroad company was entitled under said grants of congress, and all rights of said railroad company to receive from the United States any lands within said county and state which had not been certified or patented to said railroad company, whether under the grant expressed in the act of congress of July 2, 1864, or under any subsequent grant by way of indemnity or otherwise, to said railroad company; together with all the right, title, interest, and claim in or to any such lands and all its rights to receive from the United States, patents therefor, and also all mineral and other reservations and exceptions of every nature and description contained in any conveyance or contract in respect of lands within said county and state at any time made by said railroad company or its Receivers, or otherwise, and all rights, benefits, equity of redemption, title, interest, or claim of said railroad company thereunder, and in and to all lands granted to it by the Congress of the United States within said county and state and which might not be included in the sales under said decrees under the foregoing description of lands for which letters patent had issued to said railroad company, and the right to receive lands for which letters patent had not issued, but which had been selected by and certified to said com-

291 pany, whether or not such lands were then held by or had been theretofore sold or contracted to be sold by said railroad company or such Receivers, or were claimed to have been sold under judicial proceedings, or for non-payment of taxes or for any cause soever, and whether or not the same stood in the name of said railroad company, it having been the intention to include every possible, right, title and interest of said railroad company in and to any of the lands within said county and state covered by any grant to said railroad company, by the Congress of the United States, and which might not be included in the sale under the said decrees under the foregoing description of lands for which letters patent had issued to said railroad company and the right

to receive lands for which letters patent had not issued, but which had been selected by and certified to said company, all subject, however, to a certain mortgage, or deed of trust dated the first day of January, 1881, known as the General First Mortgage of said Northern Pacific Railroad Company, and executed by it to the Central Trust Company of New York as trustee, were offered and sold in one parcel and were struck off to said party of the third part for the sum specified in said Schedule A 9 of said reports of sales as the amount at which the lands and rights represented by "Item Number" 174 of said schedule were struck off, such sum being the highest sum bidden therefor.

And Whereas, the said sales with respect to such of the lands sold as had theretofore been contracted to be sold by the Northern Pacific Railroad Company, or by its Receivers, were made subject to the rights of the purchasers under such contracts.

And Whereas, said party of the first part, as such Special Master, did duly make his reports of sales to and file
292 the same with the said Circuit Court of the United States for the Eastern District of Wisconsin, on the 25th day of August, 1899, and also to and with the said Circuit Court of the United States for the District of Minnesota, on the 26th day of August, 1899, which said reports and the sales therein reported were, upon due notice to all parties, duly confirmed by the decrees of said Circuit Courts, respectively, entered on the following dates, viz., in the Eastern District of Wisconsin, on the 16th day of September, 1899, and in the District of Minnesota, on the 20th day of September, 1899.

And Whereas, in and by said decrees of confirmation, the said Special Master was authorized to sign, seal, execute and deliver to the said party of the third part deeds of conveyance and assignments, conveying to it all and singular the property, premises and rights of every kind and description so sold as aforesaid pursuant to the terms and conditions of such sale, and said Receivers were also ordered to make conveyances and assignments to the said party of the third part, its successors, or assigns, of said lands and rights to and in respect of land.

And Whereas, said party of the third part has fulfilled all the terms of purchase and made full payment of such bids as provided by such decrees.

Now, Therefore, This Indenture, Witnesseth, that said Alfred L. Cary, as such Special Master, party of the first part, in order to carry into effect the sales made by him as afore-

said to the party of the third part in pursuance of the said decrees and in conformity to the law and in consideration of the premises and of the prices and sums so bidden as aforesaid
293 by the said party of the third part and by it to him paid, amounting in the aggregate to the sum of one hundred seventeen thousand seven hundred dollars, the receipt whereof is hereby acknowledged, and the said Edwin H. McHenry and Frank G. Bigelow, as such Receivers, parties of the second part, pursuant to the authority, and direction to them given in and by said several decrees as hereinbefore recited and by reason of the premises and for the considerations hereinbefore expressed, have granted, bargained, sold, assigned, aliened, released, conveyed and confirmed, and the said parties of the first and second parts by these presents do grant, bargain, sell, alien, release, convey and confirm unto the said Northern Pacific [Railroay] Company, party of the third part hereto, and to its successors and assigns, forever, the following described property embraced and included in said decrees and thereunder and thereby authorized and directed to be sold, viz.:

All lands within the said County of St. Louis, in the said State of Minnesota, granted by the Congress of the United States to aid in the construction and equipment of the railroads of the Northern Pacific Railroad Company, for which letters patent have issued to said railroad company, and the right of said railroad company to receive the lands within said last mentioned county under said grants of Congress for which letters patent have not issued, but which have been selected by and certified to said company, being all the lands and rights in respect of lands described and set forth in said schedule marked A-2, annexed to and forming part of said Special Master's reports to the said Circuit Courts of the United States of sales in said State of Minnesota, and filed in
294 the offices of the clerks of said courts as aforesaid, except the lands and rights represented by "Item number" 390, in said schedule, together with all the right, title, interest, benefit, claim and demand of said Northern Pacific Railroad Company, and the Receivers thereof, in, to, under or by reason of the certain contracts made by said Company or Receivers for the sale of certain of said lands designated upon said schedule by a specific number as to the portions of said lands covered thereby, and all moneys due and to grow thereunder.

Also, all lands within the said County of St. Louis, in the said State of Minnesota, granted by the Congress of the United States to aid in the construction and equipment of the rail-

roads of the Northern Pacific Railroad Company, for which patents have not issued, and which have not been selected by and certified to said railroad company, but to which said railroad company is entitled under said grants of Congress, and all rights of said railroad company to receive from the United States any lands within said county and state, which have not been certified or patented to said railroad company, whether under the grant expressed in the act of Congress of July 2, 1864, or under any subsequent grant, by way of indemnity or otherwise, to said railroad company, together with all the right, title, interest and claim in or to any such lands, and all its rights to receive from the United States patents therefor, and also all mineral and other reservations and exceptions of every nature and description contained in any conveyance or contract in respect of lands within said county and state at any time made by said railroad company or its Receivers or otherwise, and all rights, benefits, equity of redemption, title, interest or claim of said railroad company there-

295 under and in and to all lands granted to it by the Congress of the United States within said county and state and which may not be included in the sale under said decrees under the foregoing description of lands for which letters patents have issued to said railroad company, and the right to receive lands for which letters patent have not issued but which have been selected by and certified to said company, whether or not such lands are now held by or have been heretofore sold or contracted to be sold by said railroad company or such Receivers, or are claimed to have been sold under judicial proceedings or for non-payment of taxes or for any cause soever, and whether or not the same stand in the name of said railroad company; it being the intention to include every possible right, title and interest of said railroad company in and to any of the lands within said county and state covered by any grant to said railroad company by the Congress of the United States and which may not be included in the sale under said decrees under the foregoing description of lands for which letters patent have issued to said railroad company, and the right to receive lands for which letters patent have not issued, but which have been selected by and certified to said company, all subject, however, to a certain mortgage or deed of trust dated the first day of January, 1881 known as the General First Mortgage of said Northern Pacific Railroad Company and executed by it to the Central Trust Company of New York as trustee.

296 To have and to hold all and singular, the above mentioned and described property and premises hereby conveyed or intended so to be, unto the said party of the

third part, its successors and assigns, to its and their own proper use, benefit and behoof, forever.

Subject, However with respect to such of the land hereinbefore described as have heretofore been contracted to be sold by the Northern Pacific Railroad Company or by its Receivers, to the rights of the purchasers under said contracts.

In Witness Whereof, the said Alfred L. Cary, as such Special Master, party of the first part, and the said Edwin H. McHenry and Frank G. Bigelow, as such Receivers, parties of the second part, have hereunto set their hands and seals the day and year first above written.

[Seal]

ALFRED L. CARY,
As Special Master.

Signed sealed and delivered
In the presence of
Edward G. Paul
John W. B. Van Houten
As to the signatures of Alfred
L. Cary and Frank G. Bigelow.

[Seal]

FRANK G. BIGELOW,
As one of the Receivers of the
Northern Pacific Railroad Company.

[Seal]

EDWIN H. McHENRY,
As one of the Receivers of the
Northern Pacific Railroad Company.

W. F. Von Deyn
Earl L. Marvin,

As to the signature of Edwin H. McHenry.

(Internal Revenue Stamps in the sum of $118.00 are hereunto affixed and cancelled).

297 State of Wisconsin,
County of Milwaukee—ss.

On this 23rd day of September, A. D. 1899, before me personally appeared Alfred L. Cary, to me known to be one of the persons described in and who executed the foregoing instrument as Special Master, and also known to me to be Special Master as therein described, and acknowledged to me that he executed said instrument as his free act and deed as such Special Master, for the uses and purposes therein mentioned and contained.

In Witness Whereof, I have hereunto set my hand and seal of office as Notary Public in and for the State of Wisconsin, at the City of Milwaukee and State of Wisconsin, this 23rd day of September, 1899.

EDWIN G. PAUL,
Notary Public, Residing in Milwaukee County, Wisconsin.

State of Wisconsin,
County of Milwaukee—ss.

On this 23rd day of September, A. D. 1899, before me personally appeared Frank G. Bigelow, to me known to be one of the persons described in and who executed the foregoing instrument as one of the Receivers of the Northern Pacific Railroad Company, and also known to me to be one of said Receivers as therein described, and acknowledged to me that he executed said instrument as his free act and deed as such Receiver, for the uses and purposes therein mentioned and contained.

In Witness Whereof, I have hereunto set my hand and seal of office as Notary Public in and for the State of Wisconsin, at the City of Milwaukee, in said County of Milwaukee, and State of Wisconsin, this 23rd day of September, 1899.

EDWIN G. PAUL,
Notary Public, Residing in Milwaukee
298 County, Wisconsin.

State of Minnesota,
County of Ramsey—ss.

On this 25th day of September, A. D. 1899, before me personally appeared Edwin H. McHenry, to me known to be one of the persons described in and who executed the foregoing instrument as one of the Receivers of the Northern Pacific Railroad Company, and also known to me to be one of said Receivers as therein described, and acknowledged to me that he executed said instrument as his free act and deed as such Receiver, for the uses and purposes therein mentioned and contained.

In Witness Whereof, I have hereunto set my hand and seal of office as Notary Public in and for the State of Minnesota, at the City of St. Paul, in said County of Ramsey and State of Minnesota, this 25th day of September, 1899.

W. F. VON DEYN,
[Seal] Notary Public, Residing in Ramsey County, Minnesota.

Endorsed: Defendant's Exhibit "13". Filed Dec. 1st, 1906 Henry D. Lang, Clerk, By E. Catherine Neff, Deputy Clerk.

299 Defendant's Exhibit No. 14.

This Indenture Made this 21st day of December, A. D. 1899, by and between the Northern Pacific Railroad Company, a corporation created by and existing under and by virtue of an act of the congress of the United States of America entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget's Sound on the Pacific coast, by the northern route," approved July 2, 1864, party of the first part, and the Northern Pacific Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, party of the second part, Witnesseth:

Whereas, at the January term, A. D. 1899, of the Circuit Court of the United States for the Eastern District of Wisconsin, to-wit, on the 25th day of May, 1896, in a certain cause in equity pending therein, wherein The Farmer's Loan & Trust Company is complainant, and the Northern Pacific Railroad Company, Phillip B. Winston, George R. [Shelon] Sheldon, William S. P. Prentice and William C. Sheldon, Junior, surviving partners of the firm of William C. Sheldon & Company, and others, are defendants, a certain sequestration decree was entered whereby Edwin H. McHenry and Frank C. Bigelow were appointed receivers of certain lands, assets, property and effects, real and personal, of the said Northern Pacific Railroad Company, including the lands, rights to lands and property, hereinafter mentioned and described; and

Whereas, certain decrees ancillary to that above mentioned, and of like character, force and effect were afterward entered in like causes pending between the same parties in the circuit courts of the United States for the following districts, viz.: in the district of Minnesota and in the district of
300 of North Dakota; and

Whereas, at the January term A. D. 1899 of the said circuit court of the United States for the eastern district of Wisconsin, to-wit, on the 25th day of May, 1899, in said cause in equity pending therein, it was, among other things, ordered and decreed by said court that all the lands granted by congress to aid in the construction and equipment of the railroads of the defendant, the said Northern Pacific Railroad Company, and all rights of the said defendant under the several land grants made to it by congress in any such lands lying within the State of Minnesota, and the State of North Dakota, east of

the Missouri River, should be sold at public sale to the highest bidder in the manner specified in said decree, and that such sale should be made by Alfred L. Cary, Esquire, who was thereby appointed special master for that purpose; and

Whereas, certain decrees ancillary to that of May 25, 1899, above mentioned, and of like character, force and effect were entered on June 5, 1899, in like causes pending between the same parties, in the Circuit Courts of the united States for the following districts, viz.: The District of Minnesota and the District of North Dakota; and

Whereas, the said Alfred L. Cary, Esquire, so appointed Special Master as aforesaid, in pursuance of said decrees and notices of sale given by him as required by said decrees, did, at the places specified, in said decrees and at the times specified in said notices of sale, offer at public sale all the lands in the State of Minnesota and in the State of North Dakota, east of the Missouri River, granted by congress to aid in the construction and equipment of the railroads of the said Northern Pacific Railroad Company, and all rights of the said Northern Pacific Railroad Company under the several land grants made to it by congress in any such lands lying within the said State of North Dakota east of the Missouri River;
301 and

Whereas, at such sales all of the said lands and rights to such lands so granted to the said Northern Pacific Railroad Company were offered and sold, as required by said decree, and were struck off to the said Northern Pacific Railway Company, the party of the second part hereto, as the highest and best bidder therefor; and

Whereas, the said Alfred L. Cary, Esquire, as such speciat master, did thereafter duly make his report of the said sales to, and file the same with, the said Circuit Court of the United States for the Eastern District of Wisconsin, on the 25th day of August, 1899, and also to and with the Circuit Court of the United States for the District of Minnesota on the 26th day of August, 1899, and also to and with the said Circuit Court of the United States for the District of North Dakota on the 28th day of August, 1899, which said reports and the sales therein reported were duly confirmed by the decrees of the said circuit courts respectively, entered on the following dates, viz.: in the Eastern District of Wisconsin on the 16th day of September, 1899, in the District of Minnesota on the 20th day of September, 1899, and in the District of North Dakota on the 21st day of September, 1899; and

Whereas, in and by said decrees of confirmation the said special master was authorized to sign, seal, execute, and deliver to the said Northern Pacific Railway Company deeds of conveyance, conveying to it all and singular the property, premises and rights of every kind and description so sold as aforesaid, pursuant to the terms and conditions of such sale; and said Edwin H. McHenry and Frank G. Bigelow, as such receivers, were also ordered to make conveyances to the said Northern Pacific Railway Company of the said lands and rights to and in respect of land; and

302 Whereas, said special master and said receivers have, in pursuance of said decrees, signed, sealed, executed and delivered to the said Northern Pacific Railway Company, the said conveyances thereby authorized; and

Whereas, in and by said decrees of confirmation it was further ordered and decreed that by way of further assurance and confirmation of title to the said Northern Pacific Railway Company, as such purchaser, the said Northern Pacific Railroad Company, by its proper officers and under its corporate seal, should sign, seal, execute, acknowledge and deliver to the said Northern Pacific Railway Company, as such purchaser, its deed or deeds of conveyance, assignment, transfer, release and further assurance of all said lands and rights to land, so sold as aforesaid to said Northern Pacific Railway Company, as such purchaser;

Now, Therefore, the said party of the first part in compliance with said decrees and for and in consideration of the sum of one dollar ($1.00), paid unto the said party of the first part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has conveyed, aliened, transferred, released and assigned, and by these presents does convey, alien, transfer, release and assign unto the said party of the second part, its successors and assigns in title, all its right, title, interest and claim in, to and upon all lands situated within the State of Minnesota and the State of North Dakota, east of the Missouri River, granted by the congress of the United States to aid in the construction and equipment of the railroads of the said Northern Pacific Railroad Company for which patents have issued, and the right to receive lands under said grants of congress for which patents have not issued, but which have been selected and certified to the said Northern Pacific Railroad Company, and also all lands granted by the congress of the United States, situated in the State of

303 Minnesota and the State of North Dakota east of the Missouri River, granted by the congress of the United States to aid in the construction and equipment of

the railroads of the said Northern Pacific Railroad Company for which patents have not issued, and which have not been selected by or certified to said railroad company, but to which said railroad company became entitled under said acts of congress and all rights to receive from the United States lands in said State of Minnesota and said State of North Dakota east of the Missouri River, which have not been certified or patented to the said Northern Pacific Railroad Company whether under the grant expressed in the act of congress of July 2, 1864, or under any subsequent grant, by way of indemnity, or otherwise, and all right, title, interest, and claim in or to any such lands, and all rights to receive patents therefor from the United States.

To have and to hold the said granted and conveyed lands, premises, rights and privileges, with the appurtenances, unto the said party of the second part, its successors and assigns forever.

And the said party of the first part, for itself and its successors, does by these presents covenant and agree to and with the said party of the second part, its successors and assigns, that it will hereafter upon the demand or request of the party of the second part, its successors or assigns, make, execute and deliver to the party of the second part, its successors and assigns, such further conveyance, transfer, assignment or deed of any or all of the premises, rights, privileges and appurtenances hereby intended to be conveyed, as to the party of the second part or its counsel learned in the law, shall seem meet and proper, and that it will execute and deliver any further instruments, agreements, transfers or deeds that may be requisite or necessary to more fully and in detail comply with said decrees so entered in said circuit courts of the United
304 States, viz: In the eastern district of Wisconsin on the 16th day of September, 1899, in the State of Minnesota on the 20th day of Sepember, 1899, and in the State of North Dakota on the 21st day of September, 1899.

In witness whereof, the said party of the first part has caused these presents to be sealed with its corporate seal and signed by its president the day and year first above written.

NORTHERN PACIFIC RAILROAD COMPANY,
By W. J. Curtis, Vice-President.

Signed, sealed and delivered in presence of
John J. Tierney,
Edward J. Walsh.

[Seal] Attest: Geo. H. Earl, Secretary.

Recorded at 10 A. M., October 20th, 1902, in St. Louis County, in 188 Deeds, page 568.

Endorsed: Defendant's Exhibit No. 14. Filed Dec. 1st, 1906. Henry D. Lang, Clerk, by E. Catherine Neff, Deputy Clerk.

Defendant's Exhibit No. 15.

305

Minnesota Division
Northern Pacific Railway Company.

This Deed, made the 19th day of January, in the year of our Lord One Thousand Nine Hundred, by the Northern Pacific Railway Company, a corporation duly incorporated under the laws of the State of Wisconsin, party of the first part, and Frederick Weyerhaeuser and John A. Humbird, of the City of Saint Paul, in the County of Ramsey and State of Minnesota, parties of the second part, Witnesseth:

That in the consideration of the sum of One Hundred and Seventy-three Thousand, Forty-four and Seventy one-hundredths (173,044.70) Dollars, unto it paid, the receipt of which is hereby acknowledged, does grant, bargain and convey unto the said parties of the second part, their heirs and assigns, the following described tracts of land, situate in the County of Saint Louis, in the State of Minnesota, that is to say:

* * * * * * * * * * * * * *

the southwest quarter of the southeast quarter of section seven (7);

* * * * * * * * * * * * * *

all in Township Fifty-four (54) North, Range Fourteen (14) West of the Fourth Principal Meridian;

* * * * * * * * * * * * * *

All the above described tracts of land containing, according to the United States Government survey Thirty-one Thousand, Eight Hundred and Ninety-one and Sixty-five one-hundredths (31,981.65) acres, more or less.

306 Excepting and reserving therefrom a strip of land for railroad right of way one hundred (100) feet in width, that is fifty (50) feet on each side of the center line of the main track of the Duluth and Iron Range Railroad, as the same is now located and constructed across the following described lands, said right of way having been conveyed to said Duluth and Iron Range Railroad Company by deed dated December 30th, 1884, to-wit:

The north half of the northwest quarter, the southeast quarter of the northwest quarter, the south half of the northeast quarter, and the northeast quarter of the northeast quarter of section one (1), in Township fifty-four (54) North, Range twelve (12) West of the Fourth Principal Meridian:

The southwest quarter of the northwest quarter, the east half of the southwest quarter and lot one (1) of section twenty-three (23), in Township fifty-five (55) North, Range twelve (12) West of the Fourth Principal Meridian:

Together with the [hereitaments] and appurtenances thereunto belonging or in anywise appertaining.

To Have and to Hold, the said lands and appurtenances unto the said parties of the second part, their heirs and assigns, forever, free and clear of all liens, charges and encumbrances, except taxes and assessments, if any, levied or assessed since the first [date] of January A. D. 1900.

The said party of the first part, for itself and its successors, covenants and agrees to and with the said parties of the second part, their heirs and assigns, that it is lawfully seized of all and singular the above granted and described premises, and has good right and lawful authority to grant, bargain, sell, and convey the same in the manner aforesaid; and that the
307 said parties of the second part, their heirs and assigns, shall and may at all times hereafter, peaceably and quietly, have, hold, possess and enjoy the above described granted premises, and that the same are free from encumbrances, except taxes and assessments, if any, levied or assessed since the first day of January A. D. 1900.

In witness whereof, the said party of the first part has caused these presents to be sealed with its corporate seal and signed by its President, the day and year first above written.

NORTHERN PACIFIC RAILWAY COMPANY.

Sealed and delivered in presence of: By C. S. Mellen, President.

P. W. Corbett
Harry A. Fabian.

Attest: W. H. Gerinnell, Assistant Secretary.

Northern Pacific Railway Company, 1896.

Revenue Stamp $173.50 Cancelled.

State of Minnesota,
County of Ramsey—ss.

On this 26th day of January, 1900, before me personally ap-

peared C. S. Mellen to me personally known, who, being by me duly sworn, did say that he is the President of the Northern Pacific Railway Company, the corporation which executed the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that the said instrument was signed and sealed in behalf of the corporation by authority of its Board of Directors, and said C. S. Mellen acknowledged said instrument to be the free act and deed of said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office, in the City of St. Paul
308 the day and year last aforesaid.

[Notarial Seal] P. W. CORBETT,
Notary Public, Ramsey Co., Minn.
Ramsey County, Minn.

State of Minnesota,
County of St. Louis,

I, M. C. Palmer, Register of Deeds, of St. Louis County, State of Minnesota, do hereby certify that the descriptions hereto annexed in this instrument appear of record in Book 190 of Deeds, Pages 174 and 188 inclusive, of the records of this county, among other descriptions recorded therein.

Dated this 28th day of September, 1906.

[Seal]

M. C. PALMER,
Register of Deeds.
By Thos. Clark, Deputy.

Endorsed: Defendant's Exhibit No. 15. Filed Dec. 1st, 1906. Henry D. Lang, Clerk, by E. Catherine Neff, Deputy.

Defendant's Exhibit No. 17.

309 An Act Validating certain conveyances of the Northern Pacific Railroad Company and the Northern Pacific Railway Company.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That all conveyances heretofore made by the Northern Pacific Railroad Company or by the Northern Pacific Railway Company, of land forming a part of the right of way of the Northern Pacific Railroad, granted by the Government by an Act of Congress, are hereby legalized, validated, and confirmed: Provided, That no such conveyance shall have effect to diminish said right of way to a less width than one hundred feet on each side of the center line of the main track of the railroad as now established and maintained.

Sec. 2. That this Act shall have no validating force until the Northern Pacific Railway Company shall file with the Secretary of the Interior an instrument in writing, accepting its terms and provisions.

Approved, April 28, 1904.
(Ch. 1782—58th Cong. Sess. II. 33 Stats. P. 538)

Endorsed: Defendant's Exhibit No. 17. Filed Dec. 1st, 1906. Henry D. Lang, Clerk, By E. Catherine Neff, Deputy.

Defendant's Exhibit No. 18.

310 (Public—No. 172)

An Act for the relief of certain Entrymen and Settlers within the limits of the Northern Pacific Railway Land Grant.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the provisions of the Act of July first, eighteen hundred and nine-eight (Thirtieth Statutes, pages five hundred and nine-seven and six hundred and twenty), which provided for the adjustment by the Land Department of conflicting claims to lands within the limits of the grant to the Northern Pacific Railroad Company, and also the provisions of the Act of March second, nineteen hundred and one, entitled "An Act for the relief of settlers under the public land laws to land within the indemnity limits of the grant to the Northern Pacific Railroad Company," be, and they hereby are, extended to include any bona fide settlement or entry made subsequent to January first, eighteen hundred and nine-eight, and prior to May thirty-first, nineteen hundred and five, in accordance with the erroneous decision of the Land Department respecting the withdrawal on general route of the Northern Pacific Railroad between Wallula, Washinton, and Portland, Oregon, where the same has not since been abandoned: Provided, That all lieu selections made under this Act shall be confined to lands within the State where the private holdings are situated.

Sec. 2. That this Act shall become effective upon an acceptance thereof by the Northern Pacific Railway Com-
311 pany being filed with the Secretary of the Interior.

Approved May 17, 1906.

Endorsed: Defendant's Exhibit's No. 18. Filed Dec. 1st, 1906. Henry D. Lang, Clerk, by E. Catherine Neff, Deputy.

That on the 12th day of March, A. D. 1907, the Final
312 Decree in said cause was filed with said Clerk, and was by him duly recorded; which said Decree is, in words and figures, as follows, to-wit:

Herbert H. Hoyt,
No. 497. vs. In Equity.
John A. Humbird, and Frederick Weyerhaeuser.

This cause came on to be heard on the 5th day of March, A. D. 1907, at Duluth, in said district, on the bill of the complainant, the answers of the defendants, the replies thereto of the complainant, and the evidence taken thereon. Herbert H. Hoyt, Esquire, appeared on behalf of the complainant, and C. W. Bunn, Esquire, appeared on behalf of the defendants. The court having duly considered the pleadings and evidence and the arguments of counsel; now, upon consideration thereof,

It Is Ordered, Adjudged and Decreed, that the bill of the complainant be, and the same is hereby, dismissed, with costs to be taxed.

Dated at Duluth, Minnesota, March 11th, A. D. 1907.

PAGE MORRIS Judge.

313 That on the same day, to-wit: on the 12th day of March, A. D. 1907, there was entered in the Term Minutes of said Court an Order of Court staying all further proceedings in said cause, except the taxation of costs and entry of judgment therefor, for the period of forty-two days, to enable the complainant to prepare and present a bill of exceptions and make a motion for a new trial of said cause.

That on the 27th day of March, A. D. 1907, there was filed with said Clerk a Petition on Appeal and allowance thereof by the Court, Assignment of Errors and Bond on Appeal in said Cause, in words and figures following, to-wit:

Circuit Court of the United States, for the District of Minnesota, Fifth Division.

Herbert H. Hoyt, Complainant and Appellant,
vs.
John A. Humbird and Frederick Weyerhauser, Defendants and Appellees.

The above named complainant, Herbert H. Hoyt, conceiving himself aggrieved by the decree entered herein on the 12th day of March, 1907, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Eighth Circuit, and prays that this his appeal, may be allowed; and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent

to the United States Circuit Court of Appeals for the Eighth Circuit.

Dated March 27, 1907.

H. H. HOYT,
Solicitor for Appellant.

314 The foregoing appeal is allowed March 27th, 1907.

PAGE MORRIS, Judge.

Circuit Court of the United States, for the District of Minnesota, Fifth Division.

Herbert H. Hoyt, Complainant and Appellant,
vs. In Equity.
John A. Humbird and Frederick Weyerhauser, Defendants and Appellees.

And now in the above entitled cause, and at the time of filing his petition for appeal herein, comes the said appellant, by H. H. Hoyt, his solicitor, and says that in the record and proceedings in the above entitled matter, it manifestly appears that the Court erred in the following particulars, to-wit:

First: In adjudging that the Northern Pacific Railroad Company, under its charter, approved July 2, 1864, was entitled to indemnity for the loss of the land, which was the bases of the selection of the land in controversy in the case.

Second: In not adjudging that the base land, having by act of Congress entitled "An act making a grant of lands to the State of Minnesota to aid in the construction of a railroad from St. Paul to Lake Superior", approved May 5, 1864, been previously granted to the State of Minnesota, said land having been approved by the United States to the State of Minnesota, and by said State patented to the Lake Superior & Mississippi Railroad Company, the beneficiary of said grant, said grant to the State being prior in date to that to the Northern Pacific Railroad Company under the third section of the later
315 grant; such loss, if it occurred should be deducted from the amount granted to the Northern Pacific Railroad Company.

Third: In adjudging that indemnity could be allowed the Northern Pacific Railroad Company for the loss of the land described in the pleadings in this case; and not holding that if such loss occurred it must be charged to the grant to the Northern Pacific Railway Company.

Fourth: In adjudging that the land described in the bill of complaint herein was not vacant public land, subject to entry at the time Richard B. Jones tendered his application to purchase the same.

Fifth: In adjudging that the land described in the bill of complaint herein, which was situated on the North side of the line of the Northern Pacific Railroad Company, could be legally selected as indemnity for the base land which was situated on the South side of the railroad line.

Sixth: In not adjudging that the land described in the bill of complaint herein, was vacant public land subject to entry at the time Jones made his application to purchase the same, said land having been restored to the public domain by order of the Secretary of the Interior, July 27, 1897. (25 L. D. 48).

Seventh: In adjudging that the claim of Richard B. Jones to the land described in the bill of complaint herein, did not come within the provisions of the act of July 1, 1898; that it was not the intention of Congress in the enactment of said law to protect claims to lands of such character.

316 Eighth: In adjudging that the claim of Richard B. Jones to the land described in the bill of complaint herein did not come within the provisions of the act of July 1, 1898, for the reason that he did not complete his entry of said land by payment until subsequent to January 1, 1898.

Ninth: In adjudging that Richard B. Jones had no claim to the land described in the bill of complaint herein that could be recognized, because the land was segregated from the public domain by the selection of the same by the Northern Pacific Railroad Company.

Tenth: In adjudging that the Northern Pacific Railway Company acquired title to this land, although it appears that long prior to the approval of the selection of this land by the Secretary of the Interior, the United States had sold the same to Richard B. Jones, who had paid the price and received the evidence of his title, and the government has retained the money.

Eleventh: In adjudging that the Northern Pacific Railway Company was the successor in interest of the Northern Pacific Railroad Company.

Twelfth: In adjudging that the patent issued to the Northern Pacific Railway Company for this land was valid.

Thirteenth: In not adjudging that under the evidence in this case the patent issued to the Northern Pacific Railway Company for the land in controversy was issued without authority of law and was void.

Fourteenth: In adjudging that the act incorporating the

Superior & St. Croix Railroad Company, and the amendments thereto, its name being changed to the Northern Pacific Railway Company, authorized said corporation to pur-
317 chase this land and receive the title to the same from the United States.

Fifteenth: In adjudging that title to the land described in the bill of complaint herein was acquired by the Northern Pacific Railway Company by virtue of the sale made by the special master as set forth in the answer of the defendants, and as shown by the evidence in this case.

Sixteenth: The Court erred in dismissing the bill of complaint of complainant and the decree is erroneous in so ordering and adjudging.

Wherefore the complainant and appellant, Herbert H. Hoyt, prays that said decree of the said Circuit Court of the United States for the District of Minnesota, Fifth Division, be reversed with directions to render and enter a decree in favor of complainant and appellant and against the defendants and appellee in accordance with the prayer of this appeal and the prayer of the bill of complaint in this case.

H. H. HOYT.

Solicitor for Complainant and Appellant Herbert H. Hoyt.

318 Circuit Court of the United States, for the District of Minnesota, Fifth Division.

Herbert H. Hoyt, Complainant and Appellant,

vs.

John A. Humbird and Frederick Weyerhaeuser, Defendants and Appellees.

Know all men by these presents, That we Mortimer H. Stanford and R. H. Fagen, are held and firmly bound unto the defendants above named in the sum of Five Hundred Dollars to be paid to the said defendants for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 27th day of March, A. D. 1907.

Whereas, the above named complainant has prosecuted an appeal to the United States Circuit Court of Appeals for the Eighth Circuit to reverse the decree rendered in the above entitled suit by the Circuit Court of the United States for the District of Minnesota, Fifth Division.

Now, Therefore, The condition of this obligation is such that,

that if the above named appellant shall prosecute said appeal to effect and answer all damages and costs if he fails to make said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

[Seal] R. H. FAGEN,
[Seal] MORTIMER H. STANFORD.

Signed, Sealed and Delivered in presence of

Laura O. Baxter,
O. T. Wick.

United States of America.

319 District of Minnesota,
County of St. Louis—ss.

Be it known, That on this 27th day of March, A. D. 1907, before me personally appeared Mortimer H. Stanford and R. H. Fagen, to me known to be the persons described in and who executed the foregoing bond, and acknowledged the same to be their free act and deed.

[Notarial Seal] LAURA O. BAXTER,
Notary Public, St. Louis County, Minn.
My Commission Expires Feb. 12th, 1914.

United States of America.

District of Minnesota,
County of St. Louis—ss.

Mortimer H. Stanford and R. H. Fagen, the sureties named in and who executed the foregoing bond, being first duly sworn, doth each for himself, depose and say that he is a resident and freeholder of the State of Minnesota, and worth the amount of One Thousand Dollars over and above his debts and liabilities and exclusive of his property exempt from execution.

MORTIMER H. STANFORD,
R. H. FAGEN.

Subscribed and sworn to before me this 27th day of March, A. D. 1907.

[Notarial Seal] LAURA O. BAXTER,
Notary Public, St. Louis County, Minn.
My Commission Expires Feb. 12th, 1914.

The foregoing bond is approved as to form and sufficiency this 27th day of March, A. D. 1907.

PAGE MORRIS, Judge.

320 Endorsed: Petition on Appeal and Allowance thereof, Assignment of Errors and Bond on Appeal. Filed March 27, 1907. Henry D. Lang, Clerk, By Thos. H. Pressnell, Deputy Clerk.

That on the 1st day of April, A. D. 1907, there was filed with said Clerk the Citation in said cause, with proof of service thereof; which said Citation is hereunto attached.

United States of America.

321 Circuit Court. Eighth Circuit.

Citation.

United States of America. To Frederick Weyerhaeuser and John A. Humbird. Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to an Appeal filed in the Clerk's Office of the United States Circuit Court, District of Minnesota, 5th Division, wherein Herbert H. Hoyt is Appellant and you are Appellee to show cause, if any there be, why the Decree rendered against the said Appellant as in said Appeal mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Page Morris, a Judge of the District Court of the United States for the District of Minnesota, sitting as Judge of the Circuit Court in and for said District this 27th day of March, A. D. 1907.

Seal
United States
Circuit Court
District of Minnesota.
Fifth Division.

PAGE MORRIS, Judge.

Due Service of the foregoing Citation by Copy at St. Paul, Minnesota, is hereby admitted this 30th day of March, 1907.

C. W. BUNN,
Attorney for Appellees.

Entered No. 497. United States Circuit Court, District of Minnesota, 5th Division. Herbert H. Hoyt vs. Frederick Weyerhaeuser and John A. Humbird, Defendant. Citation. Filed this 1st day of April, 1907. Henry D. Lang, Clerk, By Thos. H. Pressnell, Deputy.

United States Circuit Court, District of Minnesota.
322 Fifth Division.

I, Henry D. Lang, Clerk of said Court, do hereby certify and return to the Honorable the United States Circuit Court of Appeals for the Eighth Circuit, that the foregoing consisting of 306 pages numbered from 1 to 306 inclusive, is a true and complete transcript of the records, process, pleadings,

evidence, final decree, and all other proceedings in the cause entitled Herbert H. Hoyt vs. Frederick Weyerhaeuser and John A. Humbird, defendants, and the whole thereof—(with the exception of certain exhibits and documents expressly stipulated by all the parties to said cause and order of the Court, to be omitted from said record, which stipulation and Order appears at page 1 of this record)—as appears from the original records and files of said Court; and I further certify and return that I have annexed to said transcript and included within said paging the original Citation, with admission by attorneys for defendants, of service thereof.

In witness whereof I have hereunto set my official signature as Clerk aforesaid, and the seal of said Circuit Court, Fifth Division, at Duluth, said District and Division this 12th day of June, A. D. 1907.

Seal
United States
Circuit Court,
District of Minnesota.
Fifth Division.

HENRY D. LANG, Clerk.
By Thomas Pressnell, Deputy.

Filed June 19, 1907. John D. Jordan, Clerk.

(*Appearance of Counsel for Appellant.*)

On the nineteenth day of June, A. D. 1907, the appearance of Mr. H. H. Hoyt, as counsel for appellant, was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

No. 2637.

HERBERT H. HOYT, Appellant,
vs.
FREDERICK WEYERHAEUSER and JOHN A. HUMBIRD.

The Clerk will enter my appearance as Counsel for the Appellant.

H. H. HOYT,
Duluth, Minn.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 2637. Herbert H. Hoyt, Appellant, *vs.* Frederick Weyerhaeuser, *et al.* Appearance. Filed June 19, 1907, John D. Jordan, Clerk. H. H. Hoyt, Counsel for Appellant, Duluth, Minn.

(*Appearance of Counsel for Appellees.*)

And on the twenty-eighth day of August, A. D. 1907, the appearance of Mr. Charles W. Bunn, as counsel for appellees, was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

No. 2637.

HERBERT H. HOYT, Appellant,
vs.
FREDERICK WEYERHAEUSER ET AL.

The Clerk will enter my appearance as Counsel for the Appellees.

CHARLES W. BUNN,
St. Paul, Minnesota.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 2637. Herbert H. Hoyt, Appellant, *vs.* Frederick Weyerhaeuser, *et al.* Appearance. Filed Aug. 28, 1907, John D. Jordan, Clerk. Charles W. Bunn, Counsel for Appellees.

(*Order of Submission.*)

And on the seventeenth day of January, A. D. 1908, in the record of the proceedings of said Circuit Court of Appeals is an order of submission in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1907.

FRIDAY, *January* 17, 1908.

No. 2637.

HERBERT H. HOYT, Appellant,
vs.
FREDERICK WEYERHAEUSER ET AL.

Appeal from the Circuit Court of the United States for the District of Minnesota.

This cause having been called for hearing in its regular order, the same was argued by Mr. Herbert H. Hoyt for the appellant and by Mr. Charles W. Bunn for the appellees.

Thereupon this cause was submitted to the Court upon the transcript of record from said Circuit Court and the briefs of counsel filed herein.

(*Opinion.*)

And on the seventeenth day of April, A. D. 1908, an opinion of said United States Circuit Court of Appeals was filed in said cause, which said opinion as modified by an order of said Court entered on May 22, 1908, in said cause, is in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

No. 2637, December Term, A. D. 1907.

HERBERT H. HOYT, Appellant,
vs.
FREDERICK WEYERHAEUSER and JOHN A. HUMBIRD, Appellees.

Appeal from the Circuit Court of the United States for the District of Minnesota.

Mr. Herbert H. Hoyt, *pro se*, for appellant.
Mr. Charles W. Bunn for appellees.

Before Sanborn and Adams, Circuit Judges, and Philips, District Judge.

Syllabus.

1. RAILROAD LAND GRANTS—GRANTED AND INDEMNITY LANDS—WHEN TITLE VESTS RESPECTIVELY.—The right to particular tracts of land within the place limits of a railroad grant like that to the Northern Pacific Railroad Company vests in the grantee upon the filing of the map of definite location of the railroad approved by the proper officer of the government. The right to particular tracts of indemnity land under such a grant vests in the company upon the approval by the Secretary of the Interior of the company's selection of them, and neither this right nor the title thereunder relates back so as to divest the rights of prior entrymen or purchasers of the land under the general land laws of the United States.
2. SAME—WITHDRAWALS AND SUSPENSIONS OF INDEMNITY LANDS UNDER NORTHERN PACIFIC GRANTS VOID BEFORE APPROVAL OF SELECTIONS.—Under the grants to the Northern Pacific Railroad Company the Secretary of the Interior had no authority to withdraw or suspend from sale or entry lands within the indemnity limits of the grants which had not been previously selected with his approval, to supply deficiencies within the place limits of the grant, and such withdrawals and suspensions were ineffectual.
3. SAME—INDEMNITY LANDS OPEN TO ENTRY AND SALE UNTIL APPROVAL OF SELECTIONS.—Lands within the indemnity limits of these grants were open to entry and sale under the general land laws of the United States until the Secretary approved their selection by the grantee although the lists of their selection had been duly filed with the Land Department.
4. LAND DEPARTMENT—JURISDICTION AND POWER OF DISPOSITION OF PUBLIC LANDS NOT ARBITRARY BUT SUBJECT TO LAW AND JUDICIAL CORRECTION.—The jurisdiction and power of disposition of the public lands by the Land Department of

the United States is not arbitrary, unlimited or discretionary, but it is subject to and must be exercised in accordance with the laws of the land, and any violation or disregard of them by the Land Department is remediable in the courts.

5. SAME—PATENT TO LAND—COURTS MAY CHARGE TITLE UNDER WITH TRUST FOR RIGHTFUL CLAIMANT.—Whenever the officers of the Land Department have been induced by erroneous views of the law, by fraud or by clear mistake of fact, to issue a patent to the wrong party a court of equity, at the suit of the rightful claimant, may avoid the decision, charge the legal title under the patent with a trust in his favor and execute the trust.

6. SAME—INDEMNITY LANDS—SELECTION AGAINST ENTRY—FACTS—CONCLUSIONS.—The land in question was within indemnity limits under the grants to the Northern Pacific Railroad Company, (13 Stats., 365; 16 Stats., 378) and the Secretary had withdrawn and suspended it from entry and sale. The Company had filed its selection of this land but the Secretary had not approved it. Thereupon Jones entered and paid for it under the Timber and Stone Acts, 20 Stats. 89; 27 Stats. 348. Thereafter the Secretary approved the railroad company's selection and issued a patent for the land to that company.

Held: The entire beneficial interest and the equitable right to the land vested in Jones upon his completion of his purchase and the railroad company and its successors in interest held the title under the patent in trust for him and his grantees.

SANBORN, Circuit Judge, delivered the opinion of the court:

Hoyt, the complainant below, brought a suit in equity to obtain a decree that the defendants below, who were the grantees of the patentee, the Northern Pacific Railway Company, held the title to 40 acres of land in Minnesota in trust for him. The ground of his suit was that the Land Department of the United States, by reason of errors of law into which its officers had fallen, awarded and patented this land to the Railway Company when its legal duty required it to award and patent it to Jones, the grantee of the complainant. He rested his claim to relief on the established and familiar rule that if the officers of the Land Department are induced to issue a patent to the wrong party by erroneous views of the law, or by a fraudulent or gross mistake of the facts, the rightful claimant may avoid that decision and charge the legal title under the patent with a trust in his favor by a proper suit in equity. *James v. Germania Iron Co.*, 46 C. C. A. 476, 479, 107 Fed. 597, 600, and cases there cited. At the final hearing the court below was of the opinion that the officers of the Land Department had fallen into no error of law in the consideration and disposition of this land and it accordingly dismissed the bill, and the complainant appealed.

The claim of Jones to the title to this land arose under the Tim-

ber and Stone Acts of June 3, 1878 (20 Stats. 89) and of August 4, 1892 (27 Stats. 348) 2 U. S. Comp. Stats. 1545.

On December 17, 1897, he filed in the proper local land office his application to purchase this land under these acts and the local land officers received that application and accepted their fees for its filing. On the same day notice of this filing and that the applicant would present his proof thereunder on March 22, 1898, was issued by the register of the local land office and on the next day it was posted and published. The land lay coterminous with the line of the railroad between Duluth and Ashland within the second indemnity limits of the grant to the Northern Pacific Railroad Company under the Act of July 2, 1864, 13 Stats. 365, Chap. 217, and the joint resolution of May 31, 1870, 16 Stats. 378. The Secretary of the Interior had withdrawn it from entry and sale prior to 1894. The Company had filed on October 17, 1883, with the officers of the local land office at Duluth, and they had accepted, a selection of this and other lands in bulk in lieu of lands claimed by it to have been lost within the place limits of its grant. In 1893 is rearranged this selection and specified the particular tract lost in lieu of which it claimed each tract upon this list of selected lands. On August 27, 1896, the Secretary of the Interior erroneously decided that the eastern terminus of the Northern Pacific Railroad was at Duluth. 23 L. D. 204; *Doherty v. Northern Pacific Ry. Co.*, 177 U. S. 421; *United States v. Northern Pacific R. R. Co.*, 177 U. S. 435. On March 22, 1897, he caused the Company's selections of this and other lands coterminous with the line of railroad east of Duluth to be cancelled and on or before July 17, 1897, he restored all this land to the public domain and made it subject to disposal under the Timber and Stone Acts, the Homestead and other general laws for the disposition of the public lands. 25 L. D. 48; 34 L. D. 105. On February 28, 1898, he suspended these lands from entry pending the judicial determination of the location of the eastern terminus of the railroad but directed that in all cases where entries had been theretofore allowed parties should be permitted to complete the same by making proof thereof, but that the issue of patents should be suspended until such judicial determination. 26 L. D. 265, 488. On March 22, 1898, Jones made plenary proof and on December 10, 1898, he bought and paid for the land in question in strict accordance with the provisions of the Timber and Stone Acts, and the receiver of the local land office issued the customary receiver's receipt to him, save that he wrote across the face of it in red ink "This receipt is issued under the order of the Secretary of the Interior dated February 28, 1898, subject to any claim the Northern Pacific Railroad Company may have to the lands herein described." The Supreme Court decided that the eastern terminus of the Northern Pacific Railroad was at Ashland on April 16, 1900. On July 12, 1900, the Secretary restored to the records of the Land Department the selections made by the Company of this and other lands coterminous with the portion of the line of the railroad east of Duluth, because the courts had decided that the eastern terminus of the road was at Ashland, and directed that these selections should be "considered upon their

legality otherwise and in connection with any conflicting claims." He never approved the selections by the Company of this land, or of any land coterminous with the line of its railroad east of Duluth until months after Jones had entered and paid for the land which is the subject of this litigation. In 1905 he sustained a decision of the commissioner of the general land office that the entry of Jones should be cancelled, and he subsequently caused a patent of the land to issue to the Railway Company, 35 L. D. 105.

The complainant contends that this decision and action were induced by erroneous views of the law, in that the Secretary held (1) that the Northern Pacific Railway Company had succeeded to the rights of the Northern Pacific Railroad Company to this land under the latter's land grant, (2) that the company had sustained a legal loss of the tract of land in lieu of which the land in controversy was selected, (3) that it could lawfully select the latter although this tract was not on the same side of the railroad as the former and was not the nearest unappropriated land to it, (4) that the complainant was not entitled to the land by virtue of the provisions of the Act of July 1, 1898, 30 Stats. 620, and (5) that the entry of and payment for the land by Jones conferred upon him no equitable right to the land superior to that of the Railway Company. The last specification will be first considered because if it is well founded the complainant was entitled to a decree below although the first four specifications he urges were baseless. In the discussion of the questions here presented no distinction will be made between the Railroad Company and the Railway Company but it will be assumed that the latter has succeeded to all the rights of the former and the companies will be called the Railway Company.

The claim of the Railway Company to this land is founded on the joint resolution of May 31, 1870, which provided that it should be entitled, under the direction of the Secretary of the Interior, to as many sections of land within ten miles on each side of its road beyond the limits prescribed in its charter of July 2, 1864, 13 Stats. 370, as would make up the deficiency in the lands within the place limits of its grant which was specified in the resolution. All the land granted by this resolution was indemnity land. None of it was within the place limits of the grant or what is ordinarily termed granted land. The right of a railroad company to granted land vests in the grantee on the filing of the map of definite location approved by the proper government officer. Its right to indemnity land vests on the approval of its selection by the Secretary of the Interior. The same rules of law govern the inception by this Railway Company of an equitable right to a particular tract of indemnity land under the resolution of 1870 that condition the inception of such a right under its charter of 1864, and the Supreme Court has adjudged that these principles control the initiation of such a right.

"That no rights to lands within indemnity limits will attach in favor of the railroad company until after selections made by it with the approval of the Secretary of the Interior;

"That up to the time such approval is given, lands within indemnity limits, although embraced by the company's list of selections,

are subject to be disposed of by the United States or to be settled upon and occupied under the pre-emption and homestead laws of the United States; and,

"That the Secretary of the Interior has no authority to withdraw from sale or settlement lands that are within indemnity limits which have not been previously selected, with his approval, to supply deficiencies within the place limits of the company's road." *Sjoli v. Dreschel*, 199 U. S. 564, 565.

How can the claim of Jones be denied without a violation of these principles. No approval of any selection of this land by the Railway Company was ever made by the Secretary until after Jones had entered, purchased and paid for it and hence no right ever attached in favor of the company. The endorsement upon Jones' receiver's receipt that it was issued subject to any claim that the Northern Pacific Railroad Company might have to the land described in it was ineffective, because that Company had and could have no legal or equitable claim to it against such a purchaser. *Ryan v. Railroad Co.*, 99 U. S. 382, 388; *St. Paul Railroad v. Winona Railroad*, 112 U. S. 720, 731; *Barney v. Winona etc. R. R. Co.*, 117 U. S. 228, 232; *Wisconsin Railroad Co. v. Price County*, 133 U. S. 496, 512; *Oregon etc. R. R. Co. v. United States*, 189 U. S. 103, 112, 113; *New Orleans Pacific Railway Co. v. Parker*, 143 U. S. 42, 58.

Upon the filing of the map of definite location from Thomson Junction to Ashland this and other indemnity land was withdrawn from sale and entry by the Secretary of the Interior. *Humbird v. Avery*, 195 U. S. 480, 482. On or before July 17, 1897, these lands were restored to entry and sale (25 L. D. 48; 34 L. D. 105) and on February 28, 1898, they were suspended from entry by direction of the Secretary, except that those who, like Jones, had been allowed to enter land were permitted to make proof and payment. But the Secretary's original withdrawal and his subsequent suspension were alike futile. He was without lawful authority to make either and the lands always remained open to entry and sale under the Timber and Stone Act, the Homestead, the Pre-emption and the other general laws for the disposition of the public lands until each particular tract was either sold thereunder or the Secretary approved its selection by the Railway Company. *Hewitt v. Schultz*, 180 U. S. 139; *Nelson v. Northern Pacific Railway*, 188 U. S. 108; *Oregon etc. R. R. v. United States*, 189 U. S. 103, 110.

Before the Secretary approved the Company's selection of this land Jones, a qualified entryman, entered, purchased and paid for it in strict accordance with the provisions of the Stone and Timber Act, and obtained his receiver's receipt therefor. From the moment of that purchase this land became the property of Jones and it was no longer the land of the United States. He was the owner of the entire beneficial interest in and of the equitable title to it and the only title remaining in the United States was the naked legal title which it held in trust for him. *Carroll v. Safford*, 3 How. 441, 460, 461; *Witherspoon v. Duncan*, 4 Wall. 210, 218, 219; *Wisconsin Railroad Co. v. Price County*, 133 U. S. 496, 506.

Jones completed his purchase and obtained his receipt on De-

cember 10, 1898. His entry was not cancelled until some time subsequent to August 30, 1905, pursuant to the decision of the Secretary of the Interior made on that day and the patent was finally issued on October 18, 1905. The defendants purchased of the Railway Company on January 19, 1900, many years before Jones' entry was cancelled. They were not, therefore, *bona fide* purchasers without notice but they were purchasers from the United States through the Railway Company with full notice of the equitable right of Jones and they stand in the shoes of their grantor the United States. As the United States never after December 10, 1898, had anything but the legal title to this land which it held in trust for Jones and his assigns these defendants have nothing more.

Counsel for the defendants contends that the foregoing application of the rules of law which have been stated to the facts of this case is incorrect because the facts in *Sjoli v. Dreschel*, 199 U. S. 564, differ from those in the case at bar in that Sjoli occupied his land as a homesteader before the Railroad Company filed its list of selections and the Company's selection of Sjoli's land was never approved. But the rules of law announced in Sjoli's case were established by prior decisions of the Supreme Court, some of which have been cited, and it is those rules restated and reaffirmed in Sjoli's case and not the particular facts in that suit which determine the controversy before us. Moreover, the decisive facts of the two cases are the same in legal effect. Sjoli initiated his equitable right to his land by settlement upon it in 1884, while it was withdrawn from entry and sale under the grant to the Northern Pacific Railroad Company by an order of the Secretary made in 1871 (*Sjoli v. Dreschel*, 90 Minn. 108) and the Supreme Court held that withdrawal void and disregarded it as the law requires that the withdrawal and the suspension from entry of Jones' land before the Railroad Company's selection was approved by the Secretary, shall be held and disregarded in the case at bar. The Railroad Company filed its selection of Sjoli's land in June, 1885, but it was rejected by the officers of the Land Department. Sjoli's application to enter the land upon which his patent was founded was not filed until 1895 and the Minnesota Supreme Court held that the Secretary ought to have approved the Railroad Company's selection, that as the Company had done all in its power to secure the land its right to it was established by and dated from the filing of its selection and that Sjoli's subsequent entry and patent gave him no right to or interest in it. But the Supreme Court held that the Railroad Company acquired no right to the land by filing its selection until that selection was approved by the Secretary, just as the law now requires that the selection of Jones' land unapproved by the Secretary until after Jones entered and purchased it, shall be held to have initiated no right of the Railway Company thereto. The Supreme Court said:

"But, as already stated, the result of the cases in this court is that the Railroad Company did not acquire an interest in any particular lands within the indemnity limits merely by filing its lists of selections nor until its selections were approved by the Secretary of the Interior. * * * The Company's unapproved selections

did not, therefore, stand in the way of the lands being occupied and entered under the homestead laws. The mere filing of its lists of selections of indemnity lands did not have the effect to exclude them from occupancy under the pre-emption or homestead laws. On the contrary, notwithstanding the filing of such lists, they remained open, as before, to settlement or occupancy under those laws, until the selections were formally approved by the Secretary of the Interior and the lands withdrawn from settlement or sale. No such approval ever occurred." *Sjoli v. Dreschel*, 199 U. S. 564, 568.

Counsel says that when the Supreme Court said that "notwithstanding the filing of such lists, they remained open, as before, to settlement or occupancy under those laws, until the selections were formally approved by the Secretary of the Interior and the lands withdrawn from settlement or sale" it did not mean that the Secretary is without jurisdiction to approve a selection, because a settler under the Pre-emption or Homestead laws claims the land or files an application for it, but that its meaning was that in such a case the land is within the jurisdiction of the Land Department which may, if the facts warrant it, award it to the claimant under the settlement laws and that a mere filing of a claim to such land under the latter laws does not deprive the Secretary of jurisdiction to approve the selection made by the Railway Company. Let that proposition be conceded. The question here is not the jurisdiction but the legality of the decision of the Land Department and especially of the Secretary, its head, whereby he awarded this land to the Railway Company. The facts and the law warranted and required its award and sale to Jones. When he presented his application to purchase it under the Timber and Stone Act the Railway Company's selection of it was unapproved by the Secretary and that Company was without equitable right to it. The Land Department had jurisdiction to accept the application of Jones and to sell the land to him, or to approve the selection of the Company and to award the land to it. It exercised this jurisdiction, accepted the application of Jones, permitted him to enter the land, to prove up his claim to it, sold it to him, took his $100.00 in payment for it and issued to him his receiver's receipt and it did all this before the selection of the Company was approved and before the Company could acquire any right to the land. Jones' equitable title to the tract had then vested, and while the jurisdiction of the Land Department continued until the patent issued its power was neither arbitrary, unlimited nor discretionary, and its action was subject to judicial correction for error of law, fraud or clear mistake. The jurisdiction and power of disposition which the Land Department has of the lands of the United States, like the power of every other department of the government, is subject to the laws of the land, and the Land Department's violation or disregard of them is remediable in the courts. Its power "cannot be exercised so as to deprive any person of land lawfully entered and paid for. By such entry and payment the purchaser secures a vested interest in the property and a right to a patent therefor, and can no more be deprived of it by order of the commissioner than he can be deprived by such order of any other lawfully ac-

quired property. Any attempted deprivation in that way will be corrected whenever the matter is presented so that the judiciary can act upon it." *Cornelius v. Kessel*, 128 U. S. 456, 461; *Germania Iron Co. v. James*, 89 Fed. 811 818, 32 C. C. A. 348, 354, 355; *James v. Germania Iron Co.*, 46 C. C. A. 476, 481, 107 Fed. 597, 602; *Black v. Jackson*, 177 U. S. 349, 357; *Orchard v. Alexander*, 157 U. S. 372, 383; *Brown v. Hitchcock*, 173 U. S. 473, 478.

There is nothing in the opinion in *Humbird v. Avery*, 195 U. S. 480, inconsistent with the views which have been expressed. The Supreme Court held in that case that the lands there in controversy were subject to the provisions of the Act of July 1, 1898, (30 Stats. 597, 620, Chap. 546) and were still within the power of the Land Department which had not then finally decided the questions properly before it concerning them and hence that the suit was premature. Counsel for the defendants asserts, and the fact is conceded, that the land here in question is not subject to the Act of 1898, and the Land Department had finally decided all questions regarding this tract that were before it and had issued a patent for it before this bill was exhibited.

Attention is called to an opinion of the Attorney-General, Opinions of the Attorneys-General, Vol. 25, page 632, in which may be found an intimation that the title of a railroad company, upon an approval by the Secretary after a sale of a tract of land to a purchaser under the general land laws, of its selection of it filed before such sale, relates back to the date of the grant and divests the right of the purchaser to the land. No other authority in support of that theory has been discovered. The decisions of the Supreme Court limit the right and title to indemnity land to the date of the approval of the selection and even if the theory could be sustained its effect would be limited to lawful approvals and the approval of the selection of this tract was illegal because the tract was not the property of the United States and was not open to selection by the Company at the time of the approval.

Finally counsel invokes the familiar rule that the decisions of officers of other departments of the government upon questions within their jurisdiction are cogent and persuasive and should be followed by the courts unless they are clearly erroneous, and he reminds us that the Secretary of the Interior and the Commissioner of the General Land Office have carefully considered the questions in this case and have decided that Jones was without legal or equitable claim to this land and that the right of the Railway Company to it was superior. But Jones was a qualified entryman. The attempted withdrawals and selections of the land by the Secretary prior to his approval of the Company's selection were unauthorized by law and without legal effect. The land was open to entry and purchase until he approved the selection. Jones entered, bought and paid for it before any such approval was made. And the decisions of the Supreme Court which have been cited leave no doubt that the Secretary and the Commissioner fell into a plain error of law when they took the land which Jones had lawfully purchased from him or from his grantees and gave it to the Railway Com-

pany. Erroneous decisions of questions of law by the officers of the Land Department cannot be permitted to deprive the equitable owner of his vested right to lands which he has lawfully purchased from the United States. *Johnson v. Towsley*, 13 Wall. 72, 80; *Gibson v. Chouteau*, 13 Wall. 92, 102; *Shepley v. Cowen*, 91 U. S. 330, 340; *Moore v. Robbins*, 96 U. S. 530, 536; *St. Paul R. R. Co. v. Winona Railroad*, 112 U. S. 720, 733.

The conclusion is that by his entry and purchase Jones acquired the entire beneficial ownership and the equitable right to the land in controversy and that the Railway Company and its successors in interest obtained nothing under the patent but the naked legal title which they held in trust for him and for his successors in interest. This conclusion renders the other questions presented in this case immaterial. The decree must accordingly be reversed and the case must be remanded to the court below with directions to enter a decree for the complainant for the relief prayed in the bill, and

It is so Ordered.

Filed April 17, 1908.

(*Decree.*)

And on the seventeenth day of April, A. D. 1908, in the record of the proceedings of said Circuit Court of Appeals is a decree in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1907.

FRIDAY, *April* 17, 1908.

No. 2637.

HERBERT H. HOYT, Appellant,
vs.
FREDERICK WEYERHAEUSER and JOHN A. HUMBIRD.

Appeal from the Circuit Court of the United States for the District of Minnesota.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Minnesota, and was argued by counsel.

On Consideration Whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said Circuit Court, in this cause, be, and the same is hereby, reversed with costs; and that Herbert H. Hoyt have and recover against Frederick Weyerhaeuser and John A. Humbird the sum of Three Hundred Fifty-One and 75/100 Dollars for his costs in this behalf expended and have execution therefor.

It is further ordered that this cause be, and the same is hereby, remanded to the said Circuit Court with directions for further pro-

ceedings not inconsistent with the views expressed in the opinion of this Court.

April 17, 1908.

This decree modified and amended by order of Court entered May 22, 1908.

(Motion of Appellees to Modify Direction in Opinion and Decree.)

And on the eighteenth day of May, A. D. 1908, a motion of appellees to modify direction in opinion and decree was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

No. 2637, December Term, A. D. 1907.

HERBERT H. HOYT, Appellant,
vs.
FREDERICK WEYERHAEUSER and JOHN A. HUMBIRD, Appellees.

The opinion filed by the Court upon the 17th of April concludes as follows:

"The conclusion is that by his entry and purchase Jones acquired the entire beneficial ownership and the equitable right to the land in controversy and that the Railway Company and its successors in interest obtained nothing under the patent but the naked legal title which they held in trust for him and for his successors in interest. This conclusion renders the other questions presented in this case immaterial. The decree must accordingly be reversed and the case must be remanded to the court below for further proceedings not inconsistent with the views expressed in this opinion, and it is so ordered."

The opinion in fact disposes of the case and was so intended. No decree in the Circuit Court is possible except a decree granting all the relief prayed in the bill.

It is therefore suggested that the Court ought to change its direction so that the clause "for further proceedings not inconsistent with the views expressed in this opinion" shall read as follows: "with directions to enter a decree for the plaintiff as prayed for in the complaint."

These suggestions are made because counsel is of the opinion that it is very doubtful if remanding the case to the court below for further proceedings consistent with the opinion of this Court is a final and appealable decree.

Bostwick v. Brinkerhoff, 106 U. S. 3;
Union Mutual Life Ins. Co. v. Kirchoff, 160 U. S. 374;
Hazeltine v. Central Bank of Springfield, 183 U. S. 130;
MacFarland v. Byrnes, 187 U. S. 246;
MacFarland v. Brown, 187 U. S. 239.

Counsel desires a final decree which will at once be appealable.

Respectfully submitted,

CHARLES W. BUNN,
For Appellees.

(Endorsed:) No. 2637. Herbert H. Hoyt, Appellant, *vs.* Frederick Weyerhaeuser, *et al.* Motion Appellees to modify direction in opinion and decree. Filed May 18, 1908. John D. Jordan, Clerk.

(Order Modifying Opinion and Decree.)

And on the twenty-second day of May, A. D. 1908, in the record of the proceedings of said Circuit Court of Appeals is an order modifying the opinion and decree in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1908.

FRIDAY, *May* 22, 1908.

No. 2637.

HERBERT H. HOYT, Appellant,
vs.
FREDERICK WEYERHAEUSER and JOHN A. HUMBIRD.

Appeal from the Circuit Court of the United States for the District of Minnesota.

This cause came on to be heard upon the motion of Appellees for an order modifying the opinion and decree of this Court.

On Consideration Whereof, it appearing that said motion was filed within the time prescribed by the rules of this Court for the filing of a petition for a rehearing, it is now here ordered that said motion of Appellees be, and the same is hereby, granted.

It is further ordered, in pursuance of said motion, that there be stricken from the opinion and the decree of this Court the words in the last paragraph, to-wit: "for further proceedings not inconsistent with the views expressed in this opinion," and that in lieu thereof the following words be inserted therein, after the word "below" in said last paragraph, viz: "with directions to enter a decree for the complainant for the relief prayed in the bill."

May 22, 1908.

(Petition and Order Allowing Appeal to Supreme Court of the United States.)

And on the tenth day of June, A. D. 1908, a petition and order allowing appeal to the Supreme Court of the United States was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

HERBERT H. HOYT, Appellant,
vs.
FREDERICK WEYERHAEUSER and JOHN A. HUMBIRD, Appellees.

The above named Frederick Weyerhaeuser and John A. Humbird conceiving themselves aggrieved by the order and decree entered on May 22, 1908, in the above entitled proceeding, do hereby appeal from said decree to the Supreme Court of the United States, and they pray that this their appeal, may be allowed; and that a transcript of the record and proceedings and papers upon which said decree was made together with the assignment of errors herewith filed, duly authenticated, may be sent to the Supreme Court of the United States.

CHARLES W. BUNN,
Solicitor for Frederick Weyerhaeuser and John A. Humbird, Saint Paul, Minnesota.

June 9, 1908.

And now, to-wit, on June 10, 1908, it is ordered that the appeal be allowed as prayed for.

WALTER H. SANBORN,
Presiding Judge of the United States Circuit Court of Appeals for the Eighth Circuit.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. Herbert H. Hoyt, *vs.* Frederick Weyerhaeuser and John A. Humbird. Petition and Order allowing appeal to Supreme Court, U. S. Filed Jun- 10, 1908. John D. Jordan, Clerk. C. W. Bunn, Attorney for Appellees, St. Paul, Minnesota.

(Assignment of Errors on Appeal to Supreme Court of the United States.)

And on the tenth day of June, A. D. 1908, an assignment of errors on appeal to the Supreme Court of the United States was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

HERBERT H. HOYT, Appellant,
vs.
FREDERICK WEYERHAEUSER and JOHN A. HUMBIRD, Appellees.

Now come the above Frederick Weyerhaeuser and John A. Humbird and say that in the decree entered in this court in the above entitled cause on the 22nd of May, 1908, there was manifest error in that:

1. The court erred in decreeing that the said Frederick Weyerhaeuser and John A. Humbird held the title to the premises in controversy as trustees for the said Herbert H. Hoyt.

2. The court erred in decreeing that the selection of the premises in controversy made by the Northern Pacific Railroad Company was, although approved by the Secretary of the Interior and followed by a patent, subordinate in equity to the attempted entry and purchase of the said premises made long afterward by the grantor of the said Herbert H. Hoyt.

3. The court erred in decreeing that because of the attempted entry and purchase of the premises in controversy by the grantor of the said Herbert H. Hoyt the Secretary of the Interior was without jurisdiction to approve the selection previously filed by the Northern Pacific Railroad Company and issue the patent to said premises upon such approval.

4. The court erred in decreeing that the said entry of the Northern Pacific Railroad Company, when approved by the Secretary of the Interior, did not relate back to the making of the entry.

CHARLES W. BUNN,
Solicitor for Appellees, Frederick Weyerhaeuser and John A. Humbird.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. Herbert H. Hoyt *vs.* Frederick Weyerhaeuser and John A. Humbird. Assignment of Errors on appeal to Supreme Court, U. S. Filed Jun- 10, 1908, John D. Jordan, Clerk. C. W. Bunn, Attorney for Appellees, St. Paul, Minnesota.

(*Bond on Appeal to the Supreme Court of the United States.*)

And on the tenth day of June, A. D. 1908, a bond on appeal to the Supreme Court of the United States was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

HERBERT H. HOYT, Appellant,

vs.

FREDERICK WEYERHAEUSER and JOHN A. HUMBIRD, Appellees.

Know all men by these presents, That we, John A. Humbird, of Saint Paul, Minnesota, and the National Surety Company, a corpo-ation organized and existing under the laws of the state of New York, are held and firmly bound unto Herbert H. Hoyt in the sum of One Thousand Dollars to be paid to the said Herbert H. Hoyt for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. Sealed with our seals and dated the 9th day of June A. D. 1908.

Whereas, The above named Frederick Weyerhaeuser and John A. Humbird have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above entitled suit by the Circuit Court of Appeals of the United States for the Eighth Circuit:

Now therefore, the condition of this obligation is such that if the above named Frederick Weyerhaeuser and John A. Humbird shall prosecute said appeal to effect and answer all damages and costs, if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOHN A. HUMBIRD,
By CHARLES W. BUNN,
His Att'y in Fact.

NATIONAL SURETY COMPANY,
[SEAL.] By W. S. McCURDY,
Its Attorney in Fact.

L. A. GREEN,
H. J. LOFGREN,
As to Surety.

STATE OF MINNESOTA, *County of Ramsey, ss:*

On this 9th day of June, 1908, before me personally appeared W. S. McCurdy, Attorney in fact of the National Surety Company, the above named corporation, with whom I am personally acquainted, who, being by me duly sworn, said: That he is Attorney in fact of said corporation, the National Surety Company, that he knows the corporate seal, that it was affixed by order of the Board of Directors of said corporation, and that he signed said instrument as Attorney in fact of said corporation by like authority and the said W. C. McCurdy acknowledged said instrument to be the free act and deed of said corporation.

[SEAL.] A. H. MARTIN,
Notary Public, Ramsey County, Minnesota.

My Commission expires July 12, 1914.

Approved as a Supersedeas:
WALTER H. SANBORN,
Presiding Judge of the United States Circuit Court of Appeals for the Eighth Circuit.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. Herbert H. Hoyt, *vs.* Frederick Weyerhaeuser and John A. Humbird. Bond on Appeal to Supreme Court, U. S. C. W. Bunn, Attorney for Appellees, St. Paul, Minnesota. Filed Jun- 10, 1908, John D. Jordan, Clerk.

(*Citation.*)

And on the thirteenth day of June, A. D. 1908, a citation on appeal to the Supreme Court of the United States was filed in said cause, the original of which, with the admission of service endorsed thereon, is hereto attached and herewith returned:

THE UNITED STATES OF AMERICA:

To Herbert H. Hoyt, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the City of Washington, D. C., thirty days from and after the day this Citation bears date, pursuant to an appeal, filed in the Clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit, wherein Frederick Weyerhaeuser and John A. Humbird are appellants, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Walter H. Sanborn, Presiding Judge of the United States Circuit Court of Appeals for the Eighth Circuit, at the City of Saint Paul, Minnesota, this 10th day of June in the year of our Lord one thousand nine hundred and eight.

WALTER H. SANBORN,
Presiding Judge of the United States Circuit Court of Appeals for the Eighth Circuit.

Due service of this instrument and receipt of copy thereof admitted at Duluth Minnesota this 11th day of June 1908.

H. H. HOYT,
Counsel & Solicitor for Appellee.

[Endorsed:] U. S. Circuit Court of Appeals Eighth Circuit. Herbert H. Hoyt *vs.* Frederick Weyerhaeuser and John A. Humbird. Citation. Filed Jun- 13, 1908. John D. Jordan, Clerk.

(*Clerk's Certificate.*)

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing transcript contains full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of said United States Circuit Court of Appeals, in a certain cause in said Court

wherein Herbert H. Hoyt is Appellant and Frederick Weyerhaeuser and John A. Humbird are Appellees, as full, true and complete as the originals of the same now remain on file and of record in my office.

I do further certify that the original citation, with the admission of service endorsed thereon, is hereto attached and herewith returned.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this sixth day of June, A. D. 1908.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Endorsed on cover: File No. 21,254. U. S. circuit court appeals, 8th circuit. Term No. 458. Frederick Weyerhaeuser and John A. Humbird, appellants, *vs.* Herbert H. Hoyt. Filed July 8th, 1908. File No. 21,254.